

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APR 16 2013

S.C. Supreme Court

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.

**APPENDIX TO THE RECORD ON APPEAL
VOLUME I**

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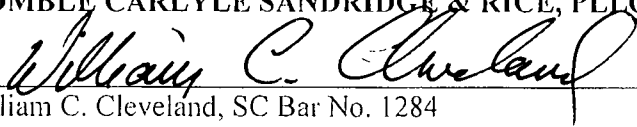
EMERALD INVESTMENTS, LLC AND STUART LONGMAN,

Respondents.

CONSENT OF COUNSEL TO SUPPLEMENT THE RECORD ON APPEAL

In accordance with Rule 212(b) of the SC Rules of Appellate Procedure, the undersigned hereby consent to supplement the Record on Appeal with the material contained in this Appendix.

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

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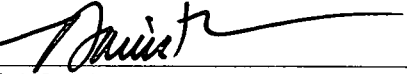
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Attorneys for the Appellants

Charleston, South Carolina

Dated: April 18, 2013

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Attorneys for Respondent

Charleston, South Carolina

Dated: April 12, 2013

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Kristi Lea Harrington, Circuit Judge

RECEIVED

APR 16 2013

Case Tracking No. 2011201949

S.C. Supreme Court

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

Appellants,

v.

EMERALD INVESTMENTS, LLC AND STUART LONGMAN,

Respondents.

STIPULATION

Pursuant to Rule 261(a), SCACR, the parties in the above-captioned action hereby stipulate and agree as follows:

1. That, pursuant to a stipulation filed by the parties, the Order of the Arbitrators dated October 28, 2010, which was issued in *Emerald Investments, LLC v. Kriti Ripley, LLC*, Re: 13 115 Y 00216 10, was subsequently confirmed by the Supreme Court, County of New York, State of New York, by Order filed on December 29, 2011, in an action entitled *Kriti Ripley, LLC v. Emerald Investments, LLC*, Index No. 652851/11.

2. That on January 22 and 23, 2013, Circuit Judge Deadra L. Jefferson conducted a bench trial and received testimony and other evidence involving the merits of the claims and defenses raised by the parties in the lawsuit pending in the Charleston County Court of Common Pleas, Ninth Judicial Circuit, State of South Carolina, entitled *Emerald Investments, LLC v. Ashley River Properties II, LLC and Kriti Ripley, LLC*, Case No. 09-CP-10-553. Judge Jefferson took the matter under advisement at the conclusion of the trial. The parties are awaiting a decision from Judge Jefferson, which will be included in the Record on Appeal once received.

IT IS SO STIPULATED:

This 2nd day of April, 2013.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IN THE MATTER OF THE ARBITRATION BETWEEN

KRITI RIPLEY, LLC

INDEX NO.

PETITIONER,
-against-

NOTICE OF PETITION
TO CONFIRM ARBITRATION AWARD

EMERALD INVESTMENTS, LLC

RESPONDENT.

-----X

PLEASE TAKE NOTICE that the undersigned will move the Court, before the Motion Submission Part in Room 130 of the New York County Courthouse, 60 Centre Street, New York, New York, on December 15, 2011 at 9:30 a.m. or as soon thereafter as counsel may be heard, for an Order pursuant to CPLR §7510 confirming the Award of the Arbitrators (the "Award") rendered pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") on October 28, 2010, in the case entitled *Emerald Investments, LLC and Kriti Ripley, LLC* (Case No. 13 115 00216 10).

Petitioner, in applying for the aforementioned relief, will rely upon the Verified Petition to Confirm Arbitration Award, dated October 14, 2011, with exhibits.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §403(b), an answer and supporting affidavits, if any, and any other papers in opposition to the instant motion are to be served on the undersigned not later than December 8, 2011.

Dated: White Plains, New York
October 14, 2011

RAND ROSENZWEIG
RADLEY & GORDON LLP

By: /S/
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Schulte Roth & Zabel LLP
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 Attn: Robert Ward, Esq.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IN THE MATTER OF THE ARBITRATION BETWEEN

KRITI RIPLEY, LLC

INDEX No.

PETITIONER,
-against-

VERIFIED PETITION
TO CONFIRM ARBITRATION AWARD

EMERALD INVESTMENTS, LLC

RESPONDENT.

-----X

KRITI RIPLEY, LLC ("Kriti") by its attorneys, Rand Rosenzweig Radley & Gordon LLP,
for its petition herein, alleges as follows:

1. This is a petition for an order confirming the Award of the Arbitrators rendered pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") on October 28, 2010, in the matter entitled *Emerald Investments, LLC and Kriti Ripley, LLC* (Case No. 13 115 00216 10) ("2010 Arbitration"). A copy of the award in the 2010 Arbitration ("2010 Award") is attached hereto as Exhibit A.

The Parties

2. Kriti is a Delaware limited liability company formed in December 2003, for the purpose of becoming a member of, and investing money in, ARP-II, a company formed to own and develop waterfront property located in Charleston, S.C.

3. Respondent, Emerald Investments, LLC ("Emerald") is a Connecticut limited liability company and is the only other member of ARP-II. Stuart Longman ("Longman") is the owner and principal of Emerald.

4. ARP-II is a South Carolina limited liability company owning and developing real estate located in Charleston, South Carolina. In particular, ARP-II is engaged in the Ripley Light Yacht Club project (the "Project"), involving the acquisition of several waterfront properties and an existing marina, the construction of expanded marina facilities and other amenities and the projected development of residential condominiums. The Project is located on the Ripley canal, a small waterway off the Ashley River in Charleston, South Carolina.

The Operating Agreement, Arbitration and NY Jurisdiction

5. On December 29, 2003, Emerald and Kriti, as members, entered into an Operating Agreement with and pertaining to ARP-II. A copy of this agreement (the "Operating Agreement") is attached hereto as Exhibit B.

6. Section 12.8 of the Operating Agreement contains a broad arbitration clause providing for binding arbitration of any disputes among the parties before the American Arbitration Association to be held in New York City:

"Any dispute or controversy arising under or in connection with this Agreement shall be submitted to by binding arbitration in accordance with the requirements of the American Arbitration Association... All arbitration proceedings shall be conducted in New York County, New York."

7. In addition, in Section 12.5 of the Operating Agreement, the parties agreed to exclusive jurisdiction in the courts of the State of New York, and exclusive venue in New York County:

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.

Prior Disputes between the Parties

8. On or about March 23, 2005, Kriti and ARP-II initiated a demand with the American Arbitration Association against Emerald and Longman, for breach of the Operating Agreement (the "First Arbitration").

9. Hearings for the First Arbitration were held in August and September, 2005 and the arbitrators rendered their award on October 31, 2005 (the "First Award"; attached as Exhibit C).

10. The arbitrators found that Emerald and Longman's conduct constituted defaults under the Operating Agreement and awarded damages and other remedies to Kriti and ARP-II, including the award of costs and attorneys fees for the arbitration.

11. On December 9, 2005, the arbitrators clarified the First Award, but did not change its substantive provisions. A copy of the Clarification of First Award is attached hereto as Exhibit D.

12. During the hearings in the First Arbitration, parties to the First Arbitration stipulated to severance of the claims for amounts due to/from ARP-II and Emerald/Longman, and agreed that these claims could be submitted in a new arbitration.

13. On or about November 23, 2005, Kriti and ARP-II commenced a second arbitration for the severed portion of the prior arbitration proceeding by filing another Demand for Arbitration and Statement of Claim against Emerald and Longman in accordance with the Commercial Arbitration Rules of the AAA (the "Second Arbitration"). Hearings in the Second Arbitration were held in May 2006, and the arbitrator rendered an award on June 22, 2006. ("Second Award"; a copy of which is attached as Exhibit E).

14. In the Second Award, the arbitrator found that Kriti and ARP-II were entitled to recover damages from Emerald and Longman, and their costs and attorneys fees incurred during the Second Arbitration.

15. On or about July 5, 2006, Emerald and Longman moved for modification of the Second Award purportedly in accordance with Rule 46 of the Commercial Arbitration Rules of the AAA. On July 28, 2006, the arbitrator denied the request for modification. A copy of the Denial is attached as Exhibit F.

Confirmation of the Awards

16. Kriti and ARP-II filed petitions to confirm the First Award and the Second Award in the New York Supreme Court, New York County. After consolidating the two petitions, on February 15, 2008, the Supreme Court, by Justice Ira Gammerman, issued its Decision and Order confirming both arbitration awards. A copy of the Confirmation of Awards is attached as Exhibit G.

17. Thereafter, on March 27, 2008, the Clerk of the Supreme Court, New York County, entered a judgment against Emerald and Longman (the "Prior Judgment"; a copy of which is attached hereto as Exhibit H) confirming "in all respects" the First Award and the

Second Award. With respect to the First Award, the Prior Judgment adjudged and decreed specifically, *inter alia*, that:

- a. Kriti and ARP-II recover of Emerald and Longman, jointly and severally, the sum of \$706,225.00 with interest from October 31, 2005 until the date of Judgment in the amount of \$144,751.94;
- b. That as of January 14, 2005, Emerald forfeited all voting rights in ARP-II;
- c. That as of January 14, 2005, Kriti and ARP-II validly terminated the Project Development Agreement without penalty or premium; and
- d. That Kriti has the right to purchase the Emerald Member share for \$2,500,000 minus offsets totaling \$706,225 by a closing pursuant to the terms of Section 13.02 of the Operating Agreement. (*Id.*)

With respect to the Second Award, the Prior Judgment adjudged and decreed specifically, *inter alia*, that:

- e. Kriti and ARP-II recover of Emerald and Longman, jointly and severally, the sum of \$143,340.00 with interest from November 1, 2005 until the date of Judgment in the amount of \$29,345.43 calculated as the South Carolina statutory rate of 8.75%;
- f. Kriti and ARP-II recover of Emerald and Longman, jointly and severally, the sum of \$133,653.14 with interest from June 22, 2006 until the date of Judgment in the amount of \$19,896.92 calculated as the South Carolina statutory rate of 8.75%;
- g. Kriti and ARP-II recover of Emerald and Longman, jointly and severally, the sum of \$5,631.00 with interest from June 22, 2006 until the date of Judgment in the amount of \$838.29 calculated as the South Carolina statutory rate of 8.75%;
- h. Kriti and ARP-II shall pay or negotiate settlement of the unpaid balance of payables assumed by APR-II upon entering the Operating Agreement in an amount not to exceed \$126,897.43, which obligation, however, may not be offset against the amounts due from Emerald and Longman to Kriti and ARP-II. (*Id.*)

18. The total amount of the Prior Judgment was \$1,184,581.72, with interest accruing from March 27, 2008 at the post-judgment statutory rate of 9%. (*Id.*). To date, neither Emerald nor Longman has paid any part of the Prior Judgment, and the entire Prior Judgment, including interest thereon remains outstanding.

The 2010 Arbitration Claims

19. On or about January 10, 2010, Emerald filed a Demand for Arbitration against Kriti in accordance with the Commercial Arbitration Rules of the American Arbitration Association, which it thereafter amended twice, first on or about April 14, 2010 and again on or about July 2, 2010 on the eve of the commencement of the arbitration hearings ("Second Amended Demand"). A copy of the Second Amended Demand is attached hereto as Exhibit I.

20. As finally amended, Emerald's demand sought: (i) a declaration that Emerald is the rightful owner of 70% of the membership shares of ARP-II; (ii) a finding that the amounts contributed as loans by affiliates of Kriti to ARP-II should be treated as equity and not debt on the books of ARP-II; (iii) an order expelling Kriti from ARP-II; (iv) an injunction preventing Kriti from violating the Operating Agreement; and (v) damages and costs of arbitration.

21. Emerald alleged among other things that Kriti in its management of ARP-II since mid-2005 had committed corporate waste and other acts of misconduct which justified a finding that Kriti had breached the Operating Agreement, that Kriti should be disassociated from ARP-II, that Kriti had forfeited its membership shares in ARP-II, and/or that ARP-II should be dissolved. Emerald further claimed that it had been damaged as a result of Kriti's mismanagement of ARP-II and that Kriti should be enjoined from breaching the Operating Agreement. Kriti counterclaimed that Emerald's actions were grounds for Emerald's forfeiture of its membership shares in ARP-II and/or its dissociation from ARP-II.

22. Section 9.1 of the Operating Agreement provides that ARP-II shall dissolve . . . only upon the happening of one or more of the following events:

- a. Written consent of those Members who own the Required Interest of the Voting Rights in ARP-II;

- b. Any event occurs that makes it unlawful for all or substantially all of the business of ARP-II to be continued, but any cure of illegality with ninety (90) days after notice to ARP-II of the event is effective retroactively to the date of the event for purposes of this subsection;
- c. The filing by the Secretary of State of a certificate of administratively dissolving ARP-II . . . ;
- d. The expiration of the period fixed for the duration of ARP-II

23. Article 10 of the Operating Agreement addresses the grounds for dissociation of a member of ARP-II. Events constituting the dissociation of a member are listed in Section 10.1 as:

- a. Withdrawing, retiring or resigning from ARP-II with the consent of those Members who own the Required Voting Rights in ARP-II;
- b. If the Member files voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him or it (sic) which is not dismissed within ninety days;
- c. Any event of a Wrongful Dissociation set forth in 10.5 of the Operating Agreement.

24. The relevant provision for Wrongful Dissociation to this proceeding is Section 10.5(b) of the Operating Agreement, providing a member's expulsion because the member:

- a. Engaged in wrongful conduct that adversely and materially affected the business of ARP-II;
- b. Willfully or persistently committed a material breach of the Operating Agreement or of a duty owed to ARP-II or the other members . . . ; or
- c. Engaged in conduct relating to ARP-II's business that makes it not reasonably practicable to carry on the business with the member.

25. In its answer to the demand, Kriti denied all the allegations and demanded for itself: (i) dismissal of the arbitration; (ii) forfeiture of Emerald's interests in ARP-II pursuant to South Carolina law; (iii) confirmation that Emerald holds a 21.3% interest in ARP-II; (iv) a determination of the amount of long term liabilities on the books of ARP-II; and (v) costs and

expenses of the arbitration. A copy of Kriti's answer to the Second Amended Demand is attached hereto as Exhibit J.

2010 Arbitration Findings and Award

26. Hearings for the 2010 Arbitration were held over six days in July 2010, and the arbitrators rendered their award on October 28, 2010 (the "2010 Award"). In the 2010 Award (Exhibit A), the arbitrators found that:

- a. "Kriti continues to the [sic] be the sole member with voting rights [in ARP-II] as determined in the initial arbitration and confirmed by J.H.O. Gammerman," and "may proceed with its business operations of ARP-II" (*id.* at 2, 4);
- b. Emerald owns a 70% membership interest and Kriti owns a 30% membership interest in ARP-II (*id.* at 2);
- c. The \$7,493,077.35 loaned to ARP-II "from the Kriti's affiliates and Davidson Williams should be treated as loans," and should not to be recast as equity (*id.* at 3);
- d. All Kriti's actions in managing ARP-II complained of by Emerald, were "well within reasonable business efforts to manage a complex piece of waterfront property," such that Kriti's decisions did not constitute (i) corporate waste, (ii) wrongful conduct adverse to ARP-II's business, (iii) a material breach of the Operating Agreement, or (iv) a material breach of a duty owed to ARP-II or Emerald (*id.* at 4);
- e. There is "no basis to dissociate Kriti or Emerald from [ARP-II] or to dissolve [ARP-II]";
- f. There was insufficient facts to authorize dissolution of ARP-II pursuant to Article 9.1 of the Operating Agreement; and
- g. There was insufficient facts to authorize dissociation or expulsion of a member of ARP-II pursuant to Article 10.5 of the Operating Agreement. (*Id.*).

27. Accordingly, the arbitrators of the 2010 Arbitration awarded as follows:

- a. Emerald continues to own a 70% membership interest and Kriti continues to own a 30% membership interest in ARP-II;
- b. The loans by Kriti's affiliates to ARP-II shall be treated as loans and not recast as equity, and the amount of the loans are as set forth on the financial statement of ARP-II;
- c. Neither Kriti nor ARP-II committed corporate waste or engaged in any misconduct to support dissociation, dissolution, or an award to Emerald of

damages; and any request for dissociation, dissolution or damages against Kriti is denied;

- d. Emerald did not commit sufficient acts to support a finding of dissociation; and any request for dissociation of Emerald is denied;
- e. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture;
- f. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request is denied;
- h. Each party shall bear its own costs and expenses incurred in connection with the 2010 Arbitration; and
- i. The administrative fees and expenses of the American Arbitration Association totaling \$18,800.00 and the compensation and expenses of the arbitrators totaling \$111,183.98 shall be borne equally by the parties, such that Kriti shall reimburse Emerald the sum of \$59,527.74. (*Id.* at 4-5).

The 2010 Award Should be Confirmed

28. This petition is being filed within one year after the 2010 Award was made, as required by CPLR §7510.

29. CPLR §7510 provides: “The court shall confirm an award upon application of a party ..., unless the award is vacated or modified upon a ground specified in section 7511.”

30. None of the grounds set forth in CPLR §7511 required to vacate, modify or correct the 2010 Award apply to this proceeding.

31. Since Emerald owes Kriti and ARP-II the sum of \$1,184,581.72 plus post-judgment interest pursuant to the Prior Judgment, the amount due under the 2010 Award from Kriti to Emerald, should be offset against Emerald’s monetary obligations under the Prior Judgment as of the date of the 2010 Award.

32. Therefore, the 2010 Award should be confirmed and enforced pursuant to CPLR §7510, in substantially the form of the Proposed Order annexed hereto.

WHEREFORE, Petitioners respectfully move the Court for an order confirming the 2010 Award in substantially the form of the annexed Proposed Order, and directing that judgment be entered thereon, and such other and further relief as this Court deems just and proper.

Dated: White Plains, New York
October 14, 2011

RAND ROSENZWEIG RADLEY
& GORDON, LLP

By: _____/S/_____
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To: Emerald Investments, LLC
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Ridgefield, CT 06877

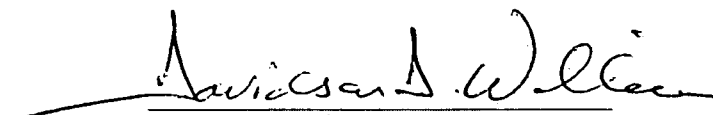
Schulte Roth & Zabel LLP
Arbitration Attorneys for Emerald Investments, LLC
919 Third Ave.
New York, N.Y. 10022
Attn: Robert Ward, Esq.

VERIFICATION

STATE OF CONNECTICUT)
) ss.:
 COUNTY OF FAIRFIELD)

DAVIDSON D. WILLIAMS, of full age, being duly sworn, says:

I am the Managing Member of Kriti Ripley, LLC, and the Petitioner in this action. I have read the foregoing Verified Petition to Confirm Arbitration Award, and know the contents thereof. The allegations made in the Verified Petition are true to the best of my knowledge, except for such matters as are alleged upon information and belief. As to those matters, I believe them to be true.


 DAVIDSON D. WILLIAMS

Sworn to and subscribed
 before me this 14th day
 of October 2011

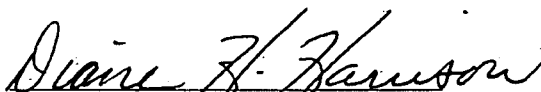

 Notary Public *Commission*
 expires 8/31/2016

EXHIBIT LIST

- Exhibit A – Arbitration Award, dated October 28, 2010
- Exhibit B – Operating Agreement
- Exhibit C – First Award, dated October 31, 2005
- Exhibit D – Clarification of First Award, dated Dec. 9, 2005
- Exhibit E – Second Award, dated June 22, 2006
- Exhibit F – Denial, dated July 28, 2006
- Exhibit G – Confirmation of Awards, dated February 15, 2008
- Exhibit H – Prior Judgment, dated March 27, 2008
- Exhibit I – Second Amended Demand, dated July 2, 2010
- Exhibit J – Answer to Second Amended Demand, dated July 14, 2010

EXHIBIT A

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

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

AWARD OF ARBITRATORS

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

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

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

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

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

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

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

AWARD OF ARBITRATORS CONTINUED

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

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

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

Ownership Interests

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

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

Loans as Equity and Not Debt

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

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

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

AWARD OF ARBITRATORS CONTINUED

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

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

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

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

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

(JE 52, Article 52.)

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

Dissolution of the Company and Dissociation

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

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

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

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

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

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AWARD OF ARBITRATORS CONTINUED

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

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

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

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

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

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

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

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

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

Accordingly, the Panel Awards as follows:

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

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In the Matter of the Arbitration between:

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 and
 Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

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

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

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

 Date
 10/28/2010

 Date
 10/28/2010

 Date

 E. Leo Millonas

 Peter L. Altieri

 David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

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

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

E. Leo Milonas
 E. Leo Milonas

 Date

 Peter L. Altieri

 Date

 David M. Rubin

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971) using a Shimadzu 1010 UV-Visible Spectrophotometer.

REF: 13 115 00216 10

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

rd.

E. Leo Milonas

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

Date _____

Peter L. Altieri

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

Date

David M. Rubin

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 00216 10

Emerald Investments, LLC ("Emerald")

and

Kriti Ripley, LLC ("Kriti")

AWARD OF ARBITRATORS CONTINUED

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

Date

E. Leo Milonas

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

10/28/2010
Date

Peter L. Altieri
Peter L. Altieri

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

10/29/2010
Date

David M. Rubin
David M. Rubin

EXHIBIT B

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

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

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

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

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

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

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

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

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

(d) Dilution.

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

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

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

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

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

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

whereby:

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

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

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

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

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

- (a) the Member is acquiring such Member's Membership Share in the Company for the Member's own account as an investment and without an intent to distribute the Membership Share;
- (b) the Member acknowledges that such Member's Membership Share has not been registered under the Securities Act of 1933 or any state securities laws;
- (c) the Member acknowledges that such Member's Membership Share is subject also to the restrictions on transfer contained in this Agreement and the Act, and may not be resold or transferred by the Member without appropriate registration under applicable securities laws or the availability of an exemption from such requirements and compliance with the restrictions herein;
- (d) the financial capacity of the Member is such that the investment in the Company is not material to the Member's total financial capacity, and the Member has the financial ability to bear the economic risk of the investment and has means for providing for the Member's current needs and personal contingencies and has no need for liquidity with respect to the Member's investment in the Company;
- (e) the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of investment in the Company, understands that investment in the Company constitutes a speculative investment with substantial market, operational, competitive, management, economic, tax, interest rate, and other risks, has evaluated the risks associated with investment in the Company AND HAS HAD OPPORTUNITY TO SEEK THE ADVICE OF THE MEMBER'S OWN INDEPENDENT LEGAL COUNSEL AND OTHER INDEPENDENT EXPERTS REGARDING THE TRANSACTION;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV MEMBER MEETINGS

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V MANAGEMENT AND CONTROL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.2.1 Authority Concerning Special Decisions.

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

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

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

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

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

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

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

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

ARTICLE VI FIDUCIARY DUTIES; RIGHT TO RELY; INDEMNIFICATION

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

- (a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Member in the conduct or winding up of the Company's business or derived from a use by the Member of the Company's property, including the appropriation of a Company opportunity; and
- (b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and
- (c) To refrain from directly competing with the Company in the conduct of the Company's business before dissolution of the Company.

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

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

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

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

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

6.5 Indemnity Agreement by Emerald and Related Parties. Simultaneously with the execution of this Agreement and as a condition of the Kiti 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 Kriti Member, as such percentages may be adjusted in accordance with this Agreement.

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

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

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

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

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

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

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

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

ARTICLE IX DISSOLUTION, WINDING UP, AND TERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE X Dissociation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XI RESTRICTIONS ON TRANSFER AND BUY-SELL PROVISIONS

11.1 Restrictions on Transfer.

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

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

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

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

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

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

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

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

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

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

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

11.3 Right to Buy Upon Dissociation.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The Members shall have the rights of purchase and sale provided by this Section, to be exercised by delivering a written notice (an "Election Notice"). The Member giving the Election Notice as provided herein is referred to as the "Electing Member," and the Member(s) receiving the Election Notice is/are referred to (whether individually or collectively) as the "Noticed Member."
- (b) This buy/sell procedure may be invoked by the delivery of an Election Notice by a Member to the other Member(s). The Election Notice shall specify a valuation of the Company as a whole (the "Noticed Value").
- (c) An Election Notice shall constitute an irrevocable offer by the Electing Member either to
 - (i) purchase all, but not less than all, of the Membership Shares owned by the Noticed Member (the "Noticed Membership Share") for a value equal to the Noticed Value multiplied by the percentage Financial Rights owned by the Noticed Member; or
 - (ii) sell all, but not less than all, of the Membership Share owned by the Electing Member (the "Electing Membership Share") for a value equal to the Noticed Value multiplied by the percentage Financial Rights owned by the Electing Member.
- (d) For a period (the "Election Period") ending at 11:59 P.M. (local time at the Company's principal office) on the thirtieth (30th) day following the date of delivery of the Election Notice, the Noticed Member(s) shall have the right to elect to purchase all of the Electing Membership Share by giving notice thereof (the "Purchase Notice") to the Electing Member (and if there is more than one Noticed Member, then they shall have the right to purchase the Electing Membership Share on a pro-rata basis, with each such Noticed Member entitled to purchase a percentage of the Electing Membership Share, expressed as a fraction, with the numerator being the Financial Membership Shares already owned by the particular Noticed Member and the denominator being the total Financial Membership Shares of all of the Noticed Members that elect to

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

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

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 Members' Rights To Receive Information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XIII EMERALD MEMBER DEFAULT/REMEDIES

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

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

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

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

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

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

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

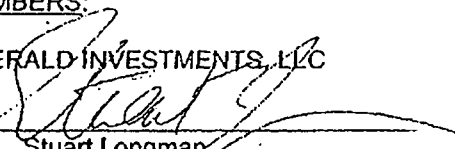
(c) the other Members may purchase the Membership Shares of the Emerald Member at a cost equal solely to the Emerald Member's unreturned Capital Contribution to the Company, in which event: (i) the closing shall take place on a date specified in a notice given by the other Members to the Emerald Member,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

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

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

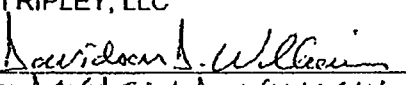
MEMBERS:

EMERALD INVESTMENTS, LLC

By: 

Stuart Longman
Managing Member

KRITI RIPLEY, LLC

By: 

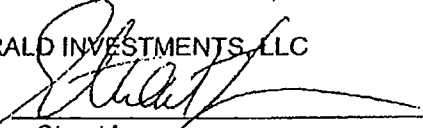
Name: DAVIDSON D. WILLIAMS

Title: Managing Member

COMPANY:

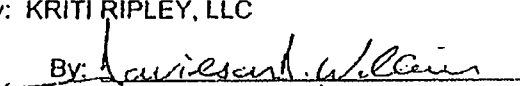
ASHLEY RIVER PROPERTIES II, LLC

By: EMERALD INVESTMENTS, LLC

By: 

Stuart Longman
Managing Member

By: KRITI RIPLEY, LLC

By: 

Name: DAVIDSON D. WILLIAMS

Title: Managing Member

Limited Joinder with respect to Sections 3.9 and 3.10 only:

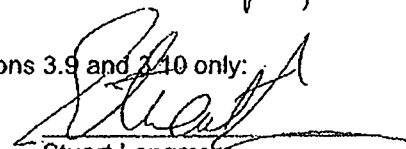

Stuart Longman

EXHIBIT AMEMBERS OF
ASHLEY RIVER PROPERTIES II, LLC

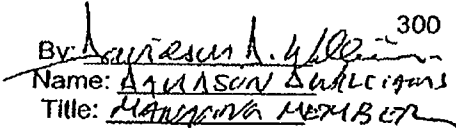
<u>Member's Name and Address</u>	<u>Member's Signature</u>	<u>Initial Financial Membership Shares</u>	<u>Initial Voting Membership Shares</u>
Emerald Investments, LLC 95 Ripley Pointe Drive P.O. Box 31565 Charleston, SC 29417-1565	By:  Stuart Longman Managing Member	700	700
Attn: Stuart Longman Kriti 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

EXHIBIT C

OCT. 31. 2005 3:30PM

NO. 0295 P. 4/15

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: 13 115 Y 00698 05

Kriti Ripley, LLC & Ashley River Properties II, LLC "Claimants"

and

Emerald Investments, LLC and Stuart Longman "Respondents"

AWARD OF ARBITRATORS

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

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

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

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

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

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

7. Emerald and Longman violated Sections 5.2(g), 5.2(p) and 5.7 by diverting \$150,000 of Marshall loan proceeds and paying themselves instead of paying Bellingham Marine, even though the application to draw down the funds certified that the \$150,000 would be paid to Bellingham Marine. Moreover, it is undisputed that when Bellingham Marine was finally paid, ARP II was charged an additional \$64,000 because of the delay in payment occasioned by Emerald and Longman.

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

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

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

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

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

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NO. 0295 P. 6/15

Re: 13 116 Y 00888 06
Kriti Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

Jefferson Standard Life Ins. Co., 133 S.C. 532, 133 S.E. 440 (1926), Litchfield Company v. Kiriakides, 280 S.C. 220, 349 S.E.2d 344 (Ct. App. 1986) and Rouse v. Branch, 91 S.C. 112, 74 S.E. 133 (Sup. Ct 1912).

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

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

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

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

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

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

Based upon the above, We Award as follows:

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

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NO. 0295 P. 7/15

Re: 13 115 Y 00698 09

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

Emerald Investments, LLC and Stuart Longman

3. Kriti has the right to purchase the Emerald Member shares for \$2.5 million subject to no offsets or adjustments except as set forth below. The closing shall take place pursuant to the terms of Section 13.02(c) of the Operating Agreement.
4. We deny the application of Kriti and ARP II for forfeiture by the Emerald Member for contesting remedies of Kriti and ARP II.
5. We deny any further claim for relief by ARP II under the Bill of Sale and General Assignment.
6. We confirm Kriti's rights under the Right of First Refusal Agreement.
7. We Find that Kriti and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party vendors against ARP II and require to the resolution of all such claims to be at the expense of ARP II.
8. We find that Emerald and Longman were the "non-prevailing" parties in this matter. Emerald and Longman shall therefore pay to Kriti the sum of \$251,000.00 for Kriti's legal fees and disbursements.
9. The administrative fees of the American Arbitration Association totaling \$17,500.00 and the compensation of the arbitrators totaling \$86,200.00 shall be borne by Emerald and Longman. Therefore Emerald and Longman shall reimburse Kriti and ARP II the sum of \$55,225.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Kriti and ARP II.
10. The amounts owed by Emerald and Longman to Kriti and ARP II pursuant to paragraphs 8 and 9 above and the \$400,000 owed pursuant to paragraph 7 above may be offset against the \$2.5 million payment referred to above in paragraph 3.
11. This Award is in full settlement of all claims and counterclaims submitted in this arbitration. All other claims and counterclaims in this proceeding are denied, except that pursuant to the parties' Stipulation on the record, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting in connection with the use of ARP II funds by Emerald and Longman, which claims and counterclaims have been severed from this proceeding.

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

10/31/05
Date

Date

Date

Michael A. Lofy

Larry Biblo

Eugene I. Farber

OCT. 31. 2005 3:31PM

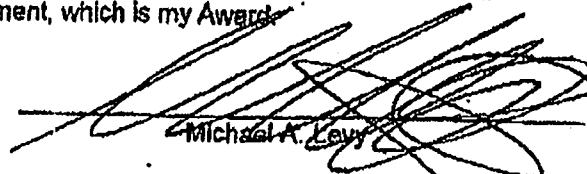
NO. 0295 P. 8/15

Re: 13 116 Y 00888 05

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

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

10/31/05
Date


Michael A. Levy

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

Date

Larry Biblo

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

Date

Eugene I. Farber

OCT. 31. 2005 3:31PM

NO. 0295 J.P. 9/15

Re: 13 116 Y 00688 05

Kriti Ripley, LLC & Ashley River Properties II, LLC

and

Emerald Investments, LLC and Stuart Longman

3. Kriti has the right to purchase the Emerald Member shares for \$2.5 million subject to no offsets or adjustments except as set forth below. The closing shall take place pursuant to the terms of Section 13.02(c) of the Operating Agreement.
4. We deny the application of Kriti and ARP II for forfeiture by the Emerald Member for contesting remedies of Kriti and ARP II.
5. We deny any further claim for relief by ARP II under the Bill of Sale and General Assignment.
6. We confirm Kriti's rights under the Right of First Refusal Agreement.
7. We Find that Kriti and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party vendors against ARP II and require to the resolution of all such claims to be at the expense of ARP II.
8. We find that Emerald and Longman were the "non-prevailing" parties in this matter. Emerald and Longman shall therefore pay to Kriti the sum of \$261,000.00 for Kriti's legal fees and disbursements.
9. The administrative fees of the American Arbitration Association totaling \$17,600.00 and the compensation of the arbitrators totaling \$88,200.00 shall be borne by Emerald and Longman. Therefore Emerald and Longman shall reimburse Kriti and ARP II the sum of \$55,225.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Kriti and ARP II.
10. The amounts owed by Emerald and Longman to Kriti and ARP II pursuant to paragraphs 8 and 9 above and the \$400,000 owed pursuant to paragraph 7 above may be offset against the \$2.5 million payment referred to above in paragraph 3.
11. This Award is in full settlement of all claims and counterclaims submitted in this arbitration. All other claims and counterclaims in this proceeding are denied, except that pursuant to the parties' Stipulation on the record, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting in connection with the use of ARP II funds by Emerald and Longman, which claims and counterclaims have been severed from this proceeding.

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

Date

10/28/05

Date

Date

Michael A. Levy

Larry Biblo

Eugene I. Farber

OCT. 31: 2005 3:31PM

NO. 0295 P. 10/15.

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

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

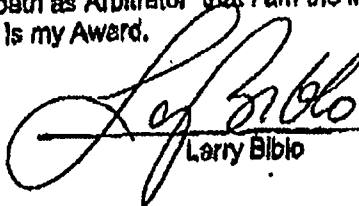
Date

Michael A. Levy

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

10/28/05

Date



Larry Biblo

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

Date

Eugene I. Farber

OCT. 31. 2005 3:31PM

NO. 0295 P. 11/15

Re: 13 115 Y 00898 05

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

Emerald Investments, LLC and Stuart Longman

3. Kriti has the right to purchase the Emerald Member shares for \$2.5 million subject to no offsets or adjustments except as set forth below. The closing shall take place pursuant to the terms of Section 13.02(c) of the Operating Agreement.
4. We deny the application of Kriti and ARP II for forfeiture by the Emerald Member for contesting remedies of Kriti and ARP II.
5. We deny any further claim for relief by ARP II under the Bill of Sale and General Assignment.
6. We confirm Kriti's rights under the Right of First Refusal Agreement.
7. We Find that Kriti and ARP II are entitled to indemnification from Emerald and Longman in the amount of \$400,000 for all claims to date of third party vendors against ARP II and require to the resolution of all such claims to be at the expense of ARP II.
8. We find that Emerald and Longman were the "non-prevailing" parties in this matter. Emerald and Longman shall therefore pay to Kriti the sum of \$251,000.00 for Kriti's legal fees and disbursements.
9. The administrative fees of the American Arbitration Association totaling \$17,500.00 and the compensation of the arbitrators totaling \$86,200.00 shall be borne by Emerald and Longman. Therefore Emerald and Longman shall reimburse Kriti and ARP II the sum of \$56,226.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Kriti and ARP II.
10. The amounts owed by Emerald and Longman to Kriti and ARP II pursuant to paragraphs 8 and 9 above and the \$400,000 owed pursuant to paragraph 7 above may be offset against the \$2.5 million payment referred to above in paragraph 3.
11. This Award is in full settlement of all claims and counterclaims submitted in this arbitration. All other claims and counterclaims in this proceeding are denied, except that pursuant to the parties' Stipulation on the record, the Panel has not made any adjudication regarding claims and/or counterclaims related to a final accounting in connection with the use of ARP II funds by Emerald and Longman, which claims and counterclaims have been reserved from this proceeding.

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

Date

Date

10/21/05

Date

Michael A. Levy

LARRY B. BLO

Eugene J. Farber

OCT. 31. 2005 3:31PM

NO. 0295 P. 12/15

Re: 13 115 Y 00888 05
Kriti Ripley, LLC & Ashley River Properties II, LLC
and
Emerald Investments, LLC and Stuart Longman

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

Date

Michael A. Levy

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

Date

Larry Biblio

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

11/30/15

Date

Eugene I. Farber

OCT. 31. 2005 3:31PM

NO. 0295 P. 13/15

10/28/2005

Kriti Ripley, LLC & Ashley River Properties II,
LLC

and

Emerald Investments, LLC and Stuart Longman

Case Manager: LAURA VANETTEN
Case Number: 13 115 Y 00698 05
Close Type: Awarded

Total Administrative Fees and Expenses	\$ 17,500.00
Total Neutral Compensation and Expenses	\$ 86,200.00

*Note that the financial reconciliation reflects costs as they were incurred during the course of the proceeding. Any apportionment of these costs by the arbitrator, per section R-43 of the rules, will be addressed in the award and will be stated as one party's obligation to reimburse the other party for costs incurred. Any outstanding balances the parties may have with the AAA for the costs incurred during the arbitration proceedings remain due and payable to the AAA even after the award is issued, and regardless of the arbitrator's apportionment of these costs between the parties in the award.

OCT. 31. 2005 3:31PM

NO. 0295 P. 14/15

KRITI RIPLEY, LLC & ASHLEY RIVER PROPERTIES II, LLC

Administrative Fees and Expenses:

Filing Fees: \$	<u>8,000.00</u>
Case Service Fees: \$	<u>3,250.00</u>
Hearing Room Expenses: \$	<u>0.00</u>
AAA Hearing Room Rental: \$	<u>875.00</u>

Your Share of Administrative Fees and Expenses: \$ 12,125.00Amounts Paid for Administrative Fees and Expenses: \$ 12,125.00Balance Administrative Fees and Expenses: \$ 0.00**Neutral Compensation and Expenses:**

Eugene Farber: \$	<u>39,725.00</u>
Larry Biblo: \$	<u>19,775.00</u>
Michael A. Levy: \$	<u>26,700.00</u>
: \$	<u>0.00</u>

Your Share of Neutral Compensation and Expenses: \$ 43,100.00Amounts Paid for Neutral Compensation and Expenses: \$ 45,000.00Balance Neutral Compensation and Expenses: \$ (1,900.00)Party Balance: \$ (1,900.00)

EMERALD INVESTMENTS, LLC AND STUART LONGMANAdministrative Fees and Expenses:

Filing Fees: \$	<u>3,250.00</u>
Case Service Fees: \$	<u>1,250.00</u>
Hearing Room Expenses: \$	<u>0.00</u>
AAA Hearing Room Rental: \$	<u>875.00</u>

Your Share of Administrative Fees and Expenses: \$ 5,375.00Amounts Paid for Administrative Fees and Expenses: \$ 4,125.00Balance Administrative Fees and Expenses: \$ 1,250.00Neutral Compensation and Expenses:

Eugene Farber: \$	<u>39,725.00</u>
Larry Biblo: \$	<u>19,775.00</u>
Michael A. Levy: \$	<u>26,700.00</u>
: \$	<u>0.00</u>

Your Share of Neutral Compensation and Expenses: \$ 43,100.00Amounts Paid for Neutral Compensation and Expenses: \$ 45,000.00Balance Neutral Compensation and Expenses: \$ (1,900.00)Party Balance: \$ (650.00)

EXHIBIT D

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 Y 00698 05

Kriti Ripley, LLC & Ashley River Properties II, LLC

"Claimants"

and

Emerald Investments, LLC and Stuart Longman

"Respondents"

DISPOSITION FOR APPLICATION OF MODIFICATION OF AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated December 29, 2003, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and having previously rendered an Award dated October 31, 2005, and Claimants having filed an application for modification dated November 15, 2005, and Respondents having responded by letter dated November 28, 2005, do hereby, DECIDE, as follows:

Paragraph 7 of page 4 of the Award is amended as follows:

- (a) The word "vendors" on line 2 is deleted and the word "vendees" is substituted therefor, and
- (b) The word "to" on line 2 is omitted.

In all other respects, Claimants' motion to Modify the Award is denied.

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

Date

Michael A. Levy

Date

Larry Bible

12-9-05

Date

Eugene I. Farber

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

Date

Michael A. Levy

Re: 13 115 Y 00698 05

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

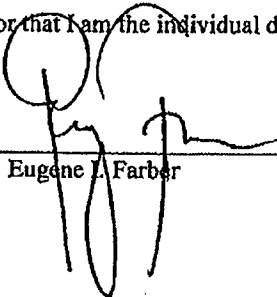
I, Larry Biblo, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Larry Biblo

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

12-9-05
Date



Eugene I. Farber

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 Y 00698 05

Kriti Ripley, LLC & Ashley River Properties II, LLC "Claimants"

and

Emerald Investments, LLC and Stuart Longman "Respondents"

DISPOSITION FOR APPLICATION OF MODIFICATION OF AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated December 29, 2003, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and having previously rendered an Award dated October 31, 2005, and Claimants having filed an application for modification dated November 15, 2005, and Respondents having responded by letter dated November 28, 2005, do hereby, DECIDE, as follows:

Paragraph 7 of page 4 of the Award is amended as follows:

- (a) The word "vendors" on line 2 is deleted and the word "vendees" is substituted therefor, and
- (b) The word "to" on line 2 is omitted.

In all other respects, Claimants' motion to Modify the Award is denied.

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

Date

Date

Date

Michael A. Levy

Larry Biblo

Eugene I. Farber

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

Date

Michael A. Levy

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

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

12/9/05
Date

Larry Biblo
Larry Biblo

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

Date

Eugene I. Farber
Eugene I. Farber

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 Y 00698 05

Kriti Ripley, LLC & Ashley River Properties II, LLC

and

Emerald Investments, LLC and Stuart Longman

"Claimants"

"Respondents"

DISPOSITION FOR APPLICATION OF MODIFICATION OF AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated December 29, 2003, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and having previously rendered an Award dated October 31, 2005, and Claimants having filed an application for modification dated November 15, 2005, and Respondents having responded by letter dated November 28, 2005, do hereby, DECIDE, as follows:

Paragraph 7 of page 4 of the Award is amended as follows:

- (a) The word "vendors" on line 2 is deleted and the word "vendees" is substituted therefor, and
- (b) The word "to" on line 2 is omitted.

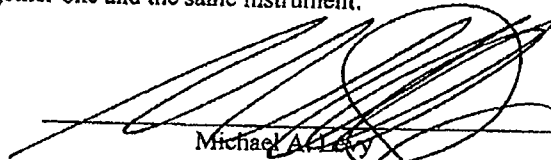
In all other respects, Claimants' motion to Modify the Award is denied.

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

12/9/05
Date

Date

Date

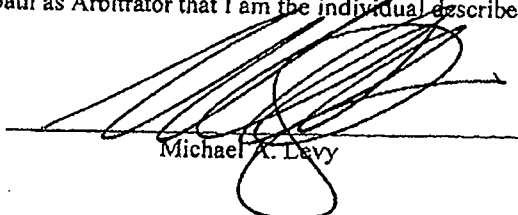

Michael A. Levy

Larry Biblo

Eugene I. Farber

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

12/9/05
Date


Michael A. Levy

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

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

Date

Larry Biblo

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

Date

Eugene I. Farber

EXHIBIT E

JUN. 22. 2006 3:14PM

WALS:01 77 WNF 3MT NO. 9123578 P. 3

AMERICAN ARBITRATION ASSOCIATION'S
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: 13 115 02570 05

Kriti Ripley, LLC & Ashley River Properties II (herein referred to as CLAIMANTS)

and

Emerald Investments LLC and Stuart Longman (herein referred to as RESPONDENTS)

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated December 29, 2003, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby, AWARD, as follows:

1. RESPONDENTS shall pay to CLAIMANTS the sum of ONE HUNDRED FORTY-THREE THOUSAND THREE HUNDRED FORTY DOLLARS AND NO CENTS (\$143,340.00), plus interest at the statutory rate for Charleston County, South Carolina from November 1, 2005 until paid in full. This amount represents the unpaid principal balance due to Claimants, plus interest thereon.
2. RESPONDENTS shall pay to CLAIMANTS the sum of ONE HUNDRED THIRTY-THREE THOUSAND SIX HUNDRED FIFTY-THREE DOLLARS AND FOURTEEN CENTS (\$133,653.14), plus interest at the statutory rate for Charleston County, South Carolina from the date of the Award until paid in full. Pursuant to paragraph 12.18 Arbitration of the Operating Agreement of Ashley River Properties II, LLC (12/29/03) this amount represents the non-prevailing parties liability for attorney and expert costs and expenses incurred in connection with the arbitration(s) between the parties.
3. WITHIN NINETY DAYS (90 days) of the date of this Award, CLAIMANTS shall pay, or negotiate settlement in the normal course of business, the unpaid balance of the PAYABLES ASSUMED BY ARP II upon entering into the Operating Agreement of Ashley River Properties II, LLC dated 12/29/03 in an amount not to exceed ONE HUNDRED TWENTY-SIX THOUSAND EIGHT HUNDRED NINETY-SEVEN DOLLARS AND FORTY-THREE CENTS (\$126,897.43).
4. THE AMOUNTS DUE CLAIMANTS under this Award are joint and severable liabilities of the RESPONDENTS.
5. CLAIMANTS obligation under paragraph 3 (above) shall not be offset against any monies due to the CLAIMANTS by the RESPONDENTS.
6. CLAIMANTS claim for an award of interest on its total capital contribution of \$1,250,000 is REJECTED.
7. RESPONDENTS counter-claim in the amount of \$23,114.45 is REJECTED.

JUN. 22. 2006 3:15PM

WVLS:010472-INTA-10000. 91235385P. 4

Re: 13 115 02570 05

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

8. The administrative fees of the American Arbitration Association totaling \$5,600.00 and the compensation and expenses of the Arbitrator totaling \$5,662.00 shall be borne by the RESPONDENTS. Therefore RESPONDENTS shall reimburse CLAIMANTS the sum of \$5,631.00 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by CLAIMANTS.

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

June 22, 2006
Date

Alfred Pruskowski
Alfred Pruskowski

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

June 22, 2006
Date

Alfred Pruskowski
Alfred Pruskowski

JUN. 22. 2006 3:15PM

NO. 9123 P. 5

6/19/2006

Kriti Ripley, LLC & Ashley River Properties
II

and

Emerald Investments LLC and Stuart
Longman

Case Manager: WILMA ROONEY
Case Number: 13 115 02570 05
Close Type: Awarded

Total Administrative Fees
and Expenses \$ 5,600.00

Total Neutral Compensation
and Expenses \$ 5,662.00

*Note that the financial reconciliation reflects costs as they were incurred during the course of the proceeding. Any apportionment of these costs by the arbitrator, per section R-43 of the rules, will be addressed in the award and will be stated as one party's obligation to reimburse the other party for costs incurred. Any outstanding balances the parties may have with the AAA for the costs incurred during the arbitration proceedings remain due and payable to the AAA even after the award is issued, and regardless of the arbitrator's apportionment of these costs between the parties in the award.

JUN. 22, 2006 3:15PM

NO. 9123 P. 6

KRITI RIPLEY, LLC & ASHLEY RIVER PROPERTIES IIAdministrative Fees and Expenses:

Filing Fees: \$	<u>1,800.00</u>
Case Service Fees: \$	<u>750.00</u>
Hearing Room Expenses: \$	<u>0.00</u>
AAA Hearing Room Rental: \$	<u>250.00</u>

Your Share of Administrative Fees and Expenses: \$ 2,800.00Amounts Paid for Administrative Fees and Expenses: \$ 3,750.00Balance Administrative Fees and Expenses: \$ (950.00)Neutral Compensation and Expenses:Alfred Pruskowski: \$ 5,662.00Your Share of Neutral Compensation and Expenses: \$ 2,831.00Amounts Paid for Neutral Compensation and Expenses: \$ 2,500.00Balance Neutral Compensation and Expenses: \$ 331.00Party Balance: \$ (619.00)

EXHIBIT F

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 115 02570 05

Kriti Ripley, LLC & Ashley River Properties II ("Claimant")

and

Emerald Investments LLC and Stuart Longman ("Respondent")

DISPOSITION FOR APPLICATION OF MODIFICATION OF AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated December 29, 2003, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and having previously rendered an Award dated June 22, 2006, and Respondent having filed an application for modification dated July 5, 2006, and Claimant having responded by letter dated July 10, 2006, do hereby, DECIDE, as follows:

As Arbitrator in the above-referenced matter, I have considered submissions by counsel with reference to seeking modification of the Award (dated June 22, 2006) pursuant to Rule 46 of the Commercial Arbitration Rules of the American Arbitration Association.

Having deliberated regarding the same, the Respondents' request for modification of the Award pursuant to Rule 46 is denied.

In all other respects my Award dated June 22, 2006, is reaffirmed and remains in full force and effect.

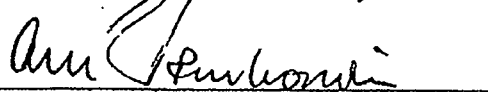


Alfred Pruskowski

7.28.06

Date

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



Alfred Pruskowski

7.28.06

Date

EXHIBIT G

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT IRA GAMMERMANPART 27

Index Number : 650195/2006

KRITI RIPLEY, LLC

vs

EMERALD INVESTMENTS, LLC

Sequence Number : 001

CONFIEM AWARD

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: ☐ Yes ☐ NoUpon the foregoing papers, it is ordered that this motion is denied inaccordance with attached decisionMOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED
 FEB 20 2008
 NEW YORK
 COUNTY CLERK'S OFFICE

Dated: 2/15/08IRA GAMMERMANCheck one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITIONCheck if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 27

-----X
In the Matter of the Arbitration Between

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

Petitioners,

-against-

EMERALD INVESTMENTS, LLC and
STUART LONGMAN,

Respondents.

Index No. 650196/06

Part Calendar 19722

-----X
IRA GAMMERMAN, J.H.O.:

This is a consolidated special proceeding originally commenced under Index Numbers 650195/06 and 650196/06. By order dated April 2, 2007, the cases were consolidated under Index No. 650196/06.

Applications bearing sequence numbers 001 and 003 under Index No. 650196/06 and motions bearing sequence numbers 001 and 002 originally under Index No. 650195/06 are hereby consolidated for purposes of disposition.¹

In this consolidated special proceeding, there are two applications to confirm arbitration awards. Originally, each petition to confirm was designated as motion sequence number 001 under different index numbers. The first arbitration award, rendered on October 31, 2005 and modified for typographical errors on December 9, 2005, was the subject of Index No. 650196/06. The first arbitration involved the issue of whether respondents had defaulted under the parties'

¹ Motion bearing sequence number 002 under Index No. 650196/06 was for consolidation of these two special proceedings.

Operating Agreement, and if so, what remedies were available to petitioners. The second arbitration award, rendered on June 22, 2006 and reaffirmed on July 28, 2006, was the subject of the petition under Index No. 650195/06. The second arbitration proceeding dealt with accounting issues and monetary claims, that had been bifurcated from the original arbitration and reserved for a subsequent arbitration, because of the time constraints contained in the arbitration provision of the parties' agreement.

There are also two motions to dismiss or stay the proceedings,² pursuant to CPLR 3211 (a) (2) and (4), one for each of the two petitions to confirm. Respondents contend that this court lacks subject matter jurisdiction, that New York is an inconvenient forum, and that there is another prior action pending in South Carolina covering the same subject matter. Respondents also request costs and attorneys' fees. If the motions to dismiss or stay are unsuccessful, then respondents oppose confirmation of the awards and seek to have both of the awards vacated on the grounds that the arbitrators exceeded their authority, and that under South Carolina law, the arbitrators manifestly disregarded the law and perversely misconstrued the law.

Background:

In February 2000, Stuart Longman, principal of Emerald Investments LLC (Emerald), a Connecticut limited liability company, acquired several waterfront properties located on and around the Ripley Canal, a small waterway on the Ashley River in Charleston, South Carolina. The properties were purchased with a view to developing them into residential condominiums with marina facilities and other amenities. During the following three years, Longman worked to

² Motion bearing sequence number 003 seeks to dismiss the petition to confirm under Index No. 650196/06, and motion bearing sequence number 002 seeks to dismiss the petition to confirm under Index No. 650195/06.

obtain approval and begin construction of this venture, known as the Ripley Light Project (the Project).

However, in mid-2003, respondents were running short of funds and began negotiations to obtain additional capital from what became petitioner Kriti Ripley, LLC (Kriti), a Delaware limited liability company. Kriti was formed for the purpose of becoming a member of, and investing money in Ashley River Properties II, LLC (ARP-II). ARP-II is a South Carolina limited liability company that was engaged in the Project.

On December 29, 2003, Kriti joined Emerald as a member of ARP-II by entering into an Operating Agreement. Under the terms of the Operating Agreement, Kriti contributed \$1,250,000 to ARP-II for a 30% membership interest. Emerald contributed certain Project property (a portion of the Project land was retained by Ashley River Properties I, LLC [ARP-I]) and other items, which collectively were valued as a contribution of \$2,500,000 for the remaining 70% membership interest in ARP-II. To induce Kriti to make the investment and participate in ARP-II, Emerald and Longman made representations and warranties that were incorporated in Section 3.9 of the Operating Agreement. Longman signed the Operating Agreement on behalf of Emerald, and also executed the agreement in his individual capacity expressly binding himself to the provisions of Section 3.9 as well as to the indemnification provisions of Section 3.10.

Pursuant to the Operating Agreement, ARP-II and Ripley Light Development, LLC (RLD), an affiliate of Longman, entered into a Development and Management Agreement, dated December 30, 2003. Under said agreement, RLD was appointed as Project Manager for ARP-

II's venture.³

The Operating Agreement provides, in Section 5.2 (g), that payments not set forth in the marina budget⁴ are prohibited. Section 5.2 (p) goes on to prohibit distributions to members without the approval of both Kriti and Emerald. In addition, under Section 5.7, the bank accounts and funds of ARP-II are not to be commingled with the funds of any other party.

Kriti alleges that, beginning with the capital contribution it provided to ARP-II, funds were diverted from ARP-II to Emerald, then to Sapphire Development LLC (Sapphire), a bankrupt affiliate of Longman, and ultimately to Longman's wife. In the meantime, respondents provided false financial reports, bank statements and tax records designed to conceal the improper diversion of funds from the ARP-II account.

In August 2004, when the diversion was discovered, Kriti complained to Emerald that Emerald had commingled ARP-II funds with Emerald's or its affiliates' other accounts. Emerald explained that the funds had been moved from ARP-II's accounts as part of a sweep arrangement, that Emerald claimed was a common practice in real estate development, and that the monies would be returned by September 2004. Respondents contend that they repaid all the monies taken; and, in fact, they allege that they overpaid and were entitled to a refund of the overage.

Respondents contend that, despite knowledge of the diversions, the petitioners continued

³ Also at this time, on December 30, 2003, Kriti entered into an agreement with ARP-I, entitled Right of First Refusal Agreement, which provided Kriti with the opportunity to participate in the development of the properties retained by ARP-I.

⁴ The marina budget is defined in Section 5.2 as the budget attached as Schedule 5.2 (g) or the budget for future phases of the project as approved by the Required Interest of Voting Rights in the company.

to work with respondents without calling a default, while Emerald and Longman repaid the monies taken. Respondents urge that Kriti failed to declare a default when the diversions were first discovered, and as a result, Kriti waived any such default. Petitioners maintain that no waiver occurred, citing the provisions of the Operating Agreement. The Operating Agreement, in Section 12.6, provides that delay in acting on a default will not constitute a waiver, and that to be effective, all waivers must be in writing. Further, petitioners maintain that at first, they were not aware of the full scope of the diversions, so that no knowing and intelligent waiver can be inferred from the failure to take immediate action against respondents. Petitioners claim that no waiver resulted from Kriti's forbearance from calling a default, because respondents did not satisfy the condition precedent for a waiver, namely, that respondents failed to make a complete repayment of the monies diverted. Petitioners assert that approximately \$155,000 was not repaid and remains outstanding.

In addition, on two separate occasions proceeds from construction loan draw-downs intended as payments for Bellingham Marine (Bellingham) were transferred to Longman's wife, Gayla Longman, even though the draw-down requests specified that the monies were to go to Bellingham. When the funds were finally returned to ARP-II and paid to Bellingham, the delay resulted in an additional charge of \$64,000.

Also under the Operating Agreement Section 3.9, Emerald and Longman represented that there were no proceedings affecting the "Company Opportunity Parcels" defined in Section 6.1 to include over six acres of land known as the "Collins Property." However, Sapphire, respondent's bankrupt affiliate, had assigned to ARP-II its rights to a purchase agreement for said property, subject to pending litigation. While the pending litigation was eventually lost, even had

it been successful, the assignment from Sapphire was void, because unbeknownst to Kriti, Sapphire had filed for bankruptcy protection in August 2003, four months before the false representations and assignment were made. Petitioners claim that the failure to disclose Sapphire's then pending bankruptcy resulted in a breach of the warranties made under Section 3.9, and constituted another default by respondents under the Operating Agreement.

In October 2004, Kriti complained that Emerald breached the representation in the Operating Agreement concerning pre-existing obligations by failing to disclose that, prior to the formation of ARP-II, certain third-party contracts had been entered into for the purchase of units and marina slips, and/or a proposed boat storage facility; and that the contract vendees had deposited preconstruction condominium unit down payments; and that these contracts represented significant undisclosed preexisting obligations. Emerald responded that none of the third-party vendees had claims against ARP-II, as ARP-II did not exist at the time the contracts were entered into, and that Emerald would resolve the matter.

By letter dated November 4, 2004, Kriti advised respondents that they were in default under the Operating Agreement. The letter cited the aforementioned misappropriations, the commingling of funds, and the misrepresentations regarding the existence of the third-party vendee contracts and other similar claims against the property. The letter called for respondents to return monies and to resolve certain issues. Thereafter, by letter dated January 14, 2005, Kriti advised respondents that, as a consequence of their defaults, Kriti was exercising its rights pursuant to the Operating Agreement Section 13.02 (a) and (b). Under Section 13.02 (a), Kriti extinguished Emerald's voting rights in ARP-II, and then, Kriti terminated RLD as project manager of ARP-II, under Section 13.02 (b). Emerald responded by letter dated February 14,

2005, asserting that Kriti's actions were improper and unwarranted. For the next few months, the parties engaged in further correspondence regarding on the propriety of Kriti's actions.

Meanwhile on February 28, 2005, assuming it now had control of all voting interests, Kriti issued a \$2 million capital call, pursuant to Section 3.7 (b) of the Operating Agreement. Under the capital call, Emerald was required to contribute \$1.4 million. Respondents contend that the capital call was oppressive and in bad faith because ARP-II did not need the funds requested, and Kriti knew that Emerald did not have the funds to pay such a capital call.

Respondents argue that Kriti's bad faith continued with a campaign to encourage the third-party vendees to bring claims against ARP-II. The purpose of the campaign was to discredit Emerald with ARP-II's lenders, and make it appear that respondents were unable to complete the project, as a means of forcing the respondents out of ARP-II.

Without the consent of Kriti, respondents retained Knetzer and MacIntyre to act as broker and/or finder for premises including ARP-II property. Upon learning of Longman's hiring of Knetzer and MacIntyre, Kriti challenged this action as a violation of Section 5.2 (m) and called another default.

The parties were unable to resolve their differences under the Operating Agreement. Kriti and Emerald each contested the actions and authority of the other to make decisions regarding the future of the Project.

The Operating Agreement contained a broad arbitration provision in Section 12.18. This section required arbitration of "all disputes or controversies arising under or in connection with this Agreement" in accordance with the Rules of the American Arbitration Association. The arbitration was to be held in New York County, New York, and was to be completed within 120

days of the selection of the last arbitrator. The arbitrators were also directed to apply the governing law of the Operating Agreement, which under Section 12.4, was the law of the state of South Carolina.

In Section 12.5, the parties agreed 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.

The cover page of the Operating Agreement contains the following statement:

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

The Procedural History:

By letter dated March 23, 2005, Kriti served a demand for arbitration on respondents. In the arbitration, Kriti sought a determination that the respondents had committed various acts of default under the Operating Agreement, arising from the misappropriations and commingling of funds, the misrepresentations, and the breaches of the warranties enumerated above. Kriti also sought confirmation of its right to enforce the remedies provided in Section 13.02 of the Operating Agreement, including forfeiture of Emerald's interest in ARP-II or a buyout of said interest under Section 13.02 (c). In addition, Kriti sought an accounting to determine how much was still owed by respondents, and made a claim for repayment of the monies outstanding.

Respondents defended the arbitration. They claimed waiver of the defaults, based upon Kriti's acceptance of the repayment, the failure to call a default when the diversions were first

discovered, and Kriti's actions toward the brokers, Knetzer & McIntyre. In addition, respondents asserted the defense of bad faith as a bar to the declarations sought by Kriti. The bad faith conduct alleged by respondents consisted of Kriti's oppressive and improper capital call, and Kriti's actions in encouraging third-party vendees to sue ARP-II. With respect to damages, respondents alleged overpayment of approximately \$20,000, and sought a refund of this sum. Respondents also counterclaimed to recover the unpaid balance of payables assumed by ARP-II upon entering into the Operating Agreement.

Respondent Longman also challenged the jurisdiction of the arbitrators to issue an award against him, because his signature on the Operating Agreement in his individual capacity was limited to Sections 3.09 and 3.10, and because he did not specifically agree to the Operating Agreement's arbitration provision. By order dated July 11, 2005, the arbitrators found that they had jurisdiction over Longman, and denied Longman's request for dismissal, without providing any reasons.

On March 24, 2005, petitioners filed an application in federal district court for the Southern District of New York, entitled Kriti Ripley LLC v Emerald Investments LLC, 05-CV-03213 (GBD) for provisional relief pending arbitration, in the nature of a preliminary injunction confirming Kriti's right to act and control ARP-II and an order preliminarily enjoining Emerald and Longman from holding themselves out as managers of ARP-II. It appears that Kriti challenged Longman's right to retain Knetzer and MacIntyre to act as brokers and/or finders with regard to ARP-II property. Longman had hired Knetzer and MacIntyre to find a purchaser for both ARP-I and ARP-II property. They introduced Longman to a prospective purchaser, Centex Destination Properties (Centex), which offered \$20 million for both properties. While Kriti

contested the retention of Knetzer and MacIntyre, thereafter, Kriti did communicate directly with Centex regarding its offer.

However, in the federal proceeding, Kriti sought the right to be the exclusive negotiator on behalf of ARP-II on this potential deal. The motion was denied after a hearing conducted on April 25, 2005.

In August and September 2005, an arbitration hearing was held over six days. During the course of the arbitration, it became apparent that, if the parties were to address the accounting issues and damage claims, the arbitration would not be concluded within 120 days as required by the arbitration provision of the Operating Agreement. Consequently, all the parties, including Longman, entered into a stipulation on the record that reserved the accounting issues for a subsequent arbitration before a single arbitrator. With the stipulation bifurcating the case, the initial arbitration only related to the issues of whether Emerald and Longman were in default under the Operating Agreement, and if so, what remedies Kriti could employ under Section 13.02.

On October 31, 2005, the arbitrators rendered their award. The award found that Emerald and Longman had committed various enumerated acts of default. These included: 1) making of wrongful payments that were not on the approved budget or otherwise approved by Kriti, in violation of Section 5.2 (g); 2) making of payments to or for the benefit of Longman or other entities Longman controlled, in violation of Section 5.2 (p); 3) commingling of funds in accounts of Gayla Longman, in violation of Sections 5.2, 5.7 and 13.01 (b) and (c); 4) failure to disclose the Sapphire bankruptcy petition and the third-party vendee contracts, in violation of Section 3.9 (a); 5) diversion of the loan proceeds intended for Bellingham, in violation of Sections 5.2 (g),

5.2 (p) and 5.7; 6) hiring of the brokers, Knetzer and MacIntyre, in violation of Section 5.2 (m).

The arbitrators rejected respondents' defense of waiver with regard to the diversion claims and the hiring of Knetzer and MacIntyre. With regard to the failure to call a default upon discovery of the diversions, the arbitrators relied upon Section 12.6 of the Operating Agreement, which provides that to be effective, all waivers must be in writing and that delay in calling a default will not constitute a waiver. With respect to the hiring of Knetzer and MacIntyre, the arbitrators concluded that the communications between petitioners and the potential purchaser were not sufficient to constitute a waiver.

Further, the arbitrators determined that, as a consequence of these defaults, Kriti had validly exercised its remedies, under Section 12.02 (a) and (b), to eliminate Emerald's voting rights and to terminate RLD as project manager. The arbitrators confirmed Kriti's right to purchase the Membership Shares of Emerald at a cost equal solely to Emerald's unreturned capital contribution, under Section 13.02 (c), less certain specific offsets in the award. They concluded that Emerald did not forfeit its Membership Shares in ARP-II under the last paragraph of Section 13.02, because Emerald had probable cause to question the propriety and necessity of the capital call, and it would be inequitable, given all the work that Longman had put into the Project over time, for him to lose his entire interest without any compensation.

The arbitrators also confirmed that Kriti remains entitled to enforce its rights under the Right of First Refusal Agreement with ARP-I, dated December 30, 2003. The arbitrators found that petitioners were entitled to indemnification from respondents in the amount of \$400,000 for all claims to date of third-party vendees against ARP-II, and that the resolution of all these such claims is to be at the expense of ARP-II. They also determined that respondents, as the "non-

prevailing" parties, were to pay Kriti the sum of \$251,000.00 for legal fees, and were to reimburse petitioners \$55,225.00 for the arbitration administrative fees that petitioners had previously incurred.

On November 9, 2005, ARP-I and respondents brought an action entitled Ashley River Properties I, LLC v Ashley River Properties II, LLC, Case No. 2005 CP-10-4571 in the South Carolina Court of Common Pleas for the Ninth Judicial Circuit of Charleston County to vacate the first arbitration award. In the interim, the second arbitration was commenced by demand, dated November 28, 2005.

On December 12, 2005, Kriti and ARP-II filed a motion to dismiss the South Carolina action on the ground that the South Carolina courts did not have subject matter jurisdiction to entertain a motion to vacate or otherwise address the first arbitration award. Respondents opposed the motion.

On December 30, 2005, respondent Longman moved for a stay of the second arbitration in the pre-existing South Carolina action on the ground that he had not agreed to arbitrate.⁵ Kriti and ARP-II opposed Longman's motion for a stay.

In January 2006, plaintiffs in the South Carolina action filed an amended complaint. The amended complaint included additional allegations, but sought relief similar to that of the original complaint. Thereafter, on January 26, 2006, ARP-II and Kriti again moved to dismiss the amended complaint, reiterating their claim of no subject matter jurisdiction. ARP-I, Emerald

⁵Longman also pressed this issue with the arbitrator in the second arbitration. By order dated April 17, 2006, the arbitrator in the second arbitration also rejected the defense, finding that Longman was a party to and bound by Section 12.18, the arbitration provision of the Operating Agreement, and continued Longman as a party respondent in the matter before him.

and Longman opposed dismissal.

On March 2, 2006, the South Carolina court found that it lacked subject matter jurisdiction to issue the stay requested, and opined that, even if it had such jurisdiction, a stay was unwarranted. The court cited the following bases for jurisdiction in the arbitration: 1) Longman, as the sole member and manager of Emerald, was bound by the arbitration provision in the Operating Agreement; and 2) Longman had participated in the first arbitration and had stipulated to arbitrate the reserved claims, and by waiting to file his motion to stay, had waived his right to have a court determine the issue.

Thereafter, on March 15, 2006, respondents filed a motion to alter or amend the March 2, 2006 order, alleging that the court erred in making the findings of fact and conclusions of law and that they were superfluous. On April 19, 2006, the Court of Common Pleas entered a subsequent order vacating the March 2, 2006 order and substituting a two-line statement that the motion to stay was denied without stating any reasons for the decision.

Meanwhile, on March 13, 2005, petitioners filed a motion in the above-cited pre-existing federal action, Kriti Ripley, LLC v Emerald Investments, LLC, 05 Civ. 32113 (GBD), to confirm the first arbitration award. Respondents opposed the motion and cross-moved to dismiss or stay the confirmation, pending the outcome of the South Carolina action.

On April 26, 2006, respondents commenced an action in federal district court for the Southern District of New York, entitled Emerald Investments, LLC v Kriti Ripley, LLC, 06-CV-03238 (GBD). In that action, Emerald sought a declaratory judgment declaring that (i) Kriti failed to make a proper tender for Emerald's Membership Shares under Section 13.02 of the Operating Agreement; (ii) whatever rights Kriti had to seek a tender of Emerald's membership

shares under Section 13.02 of the Operating Agreement had irrevocably lapsed; and

(iii) Emerald has and continues to hold 70% of the Membership Shares of ARP-II.

The second arbitration proceeded to hearing. An award was issued on June 22, 2006. The award found the respondents jointly and severally liable for the unpaid principal balance of the monies diverted in the amount of \$143,340.00, plus interest at the South Carolina statutory rate from November 1, 2005. The award also provided that respondents, as the non-prevailing parties, were liable for attorney and expert costs and expenses of \$133,653.14, plus interest. The award further directed that with respect to respondents' counterclaim the petitioners pay or negotiate settlement of the unpaid balance of payables assumed by ARP-II upon entering into the Operating Agreement, not to exceed \$126,897.43; and that this amount was not an offset against the monies due the petitioners from respondents. The arbitrator rejected both petitioners' claim for an award of interest on Kriti's total capital contribution of \$1,250,000.00, and respondents' counterclaim for the alleged overpayment of \$23,114.45. They directed that the respondents shall reimburse the petitioners for the arbitration administrative costs of \$5,631.00, previously incurred by petitioners.

On June 26, 2006, petitioners commenced a second action in federal district court for the Southern District of New York to confirm the second arbitration award, entitled Kriti Ripley, LLC v Emerald Investments, LLC, 06 Civ. 4912 (GBD). Once again, respondents opposed the petition and cross-moved to dismiss the action for lack of subject matter jurisdiction. Meanwhile, respondents submitted a request for reconsideration to the sole arbitrator in the second arbitration. That request was denied, and the award reaffirmed on July 28, 2006.

On August 22, 2006, respondents brought a second action, entitled Emerald Investments,

LLC v Ashley River Properties II, LLC, Case No. 2006-CP-10-3254 in the South Carolina Court of Common Pleas for the Ninth Judicial Circuit, Charleston County. In this action, respondents sought to vacate the second arbitration award on the same grounds as those set forth in motion bearing sequence number 002 of original index number 650195/06.⁶

On September 6, 2006, the parties agreed to dismissal of all three federal actions, because the district court lacked subject matter diversity jurisdiction. Then, respondents amended their first complaint before the Court of Common Pleas in South Carolina in the action entitled Emerald Investments, LLC v Ashley River Properties II, LLC, case number 2005-CP-10-4571, *supra*, adding a request for new relief in the form of a judicial dissolution of ARP-II, should the court decide to vacate the arbitration award. Three days later, petitioners commenced the two special proceedings, now consolidated, to confirm each of the awards.⁷

Thereafter, Kriti moved yet again to dismiss the action in South Carolina on the grounds that the South Carolina court lacked subject matter jurisdiction, and that the action to vacate the arbitration award belonged in New York. The motion was decided in favor of petitioners herein, by order dated October 18, 2006. The South Carolina court found that it had no subject matter jurisdiction and deferred to this court,⁸ Ashley River Properties I, LLC v Ashley River Properties II, LLC, 2006 WL 4937137 (SC Com Pl, 9th Jud Dist, Charleston County). Respondents

⁶ As of the parties' last report, this motion has not been decided. However, in light of the determination affirming the dismissal of the first South Carolina action for lack of subject matter jurisdiction discussed *infra*, a similar result should be forthcoming.

⁷ As for Emerald's claim that the tender for its membership shares in ARP-II was improper, that claim was reasserted in this court in August 2006, *see Emerald Investments, LLC v Kriti Ripley, LLC*, Index No. 111957/06.

⁸ The South Carolina court severed and retained the claims of ARP-I against ARP-II.

appealed that determination to the South Carolina Court of Appeals, which affirmed by decision dated June 21, 2007, Ashley River Properties I, LLC v Ashley River Properties II, LLC, 374 SC 271, 648 SE2d 295 (Ct App 2007). No further appeal has been taken and the time to appeal to the South Carolina Supreme Court has expired. The South Carolina judgment is final.

The Motions to Dismiss:

A. Lack of Subject Matter Jurisdiction:

Respondents contend that, as stated on its cover page, the Operating Agreement is subject to the South Carolina Uniform Arbitration Act (SCUAA), and that consequently, South Carolina courts have jurisdiction to determine whether the arbitration awards should be confirmed. Petitioners point to the exclusive jurisdiction provision included in the Operating Agreement, which provides for sole and exclusive jurisdiction in New York. They argue that the SCUAA applies only to arbitrations that are held in South Carolina, and that the two arbitrations between the parties both occurred in New York, and consequently, SCUAA is inapplicable. They argue that the Operating Agreement involves interstate commerce and maritime matters, it is governed by the Federal Arbitration Act (FAA), 9 USC § 2, and that under federal law, the post arbitration court proceedings should be in New York, as the agreement directs.

The parties argued these very same points before the courts of South Carolina in Ashley Ripley I, LLC v Ashley Ripley II, LLC, 2006 WL 4937137 (SC Com Pl, 9th Jud Dist, Charleston County) aff'd 374 SC 271, 648 SE2d 295 (Ct App 2007). The South Carolina Court of Appeals held that South Carolina law does not confer jurisdiction to review out-of-state arbitration proceedings, that the FAA preempts the South Carolina statute in this matter, and that under the FAA, the provisions in the Operating Agreement, placing jurisdiction in New York, control and

should be followed. The South Carolina court explicitly deferred to the proceedings pending before me. Respondents provide no basis for a contrary result.

This court clearly has subject matter jurisdiction of these post-arbitration proceedings based upon the explicit grant of "sole and exclusive" jurisdiction contained in Section 12.5 of the Operating Agreement. The South Carolina courts, interpreting their own statutes, held that the Notice on page 1 of the Operating Agreement, cited by respondents, does not create jurisdiction in South Carolina, but that rather, the FAA controls and the parties' choice of forum controls, id.

B. Forum non conveniens:

Respondents assert that the action should be dismissed or stayed, based upon the doctrine of forum non conveniens, as codified in CPLR 327 (a). Respondents claim that South Carolina provides a more appropriate forum. However, the South Carolina courts have declined jurisdiction over this matter, and indicated that the matter should be heard here in this proceeding. Under these circumstances, where South Carolina has declined jurisdiction, it cannot be viewed as an alternative forum, let alone a more appropriate forum.

C. Another action pending:

Respondents assert that this action should be dismissed because the South Carolina action was commenced prior to this case, and involved the same parties and dispute. However, this branch of the dismissal motion has been rendered moot. The South Carolina court has dismissed the claims to vacate the arbitration awards, and deferred these matters to this court for their resolution. Since there is no action pending in South Carolina for the same relief, there is no basis for dismissal or a stay pursuant to CPLR 3211 (a) (4).

None of the grounds asserted for dismissal or a stay provide a basis for such relief. The

motions to dismiss or stay are accordingly denied.

The Petitions to Confirm:

Petitioners seek confirmation of both awards. Respondents present various grounds for denying such relief and granting vacatur of the awards in whole or in part, arguing that the arbitrators exceeded their authority, and under South Carolina law, manifestly disregarded the law and perversely misconstrued the law. While respondents contend that South Carolina law defines the standard to be applied on their motion, the nature of the underlying dispute and transactions implicates the FAA, as the South Carolina courts held, Ashley River Properties I, LLC v Ashley River Properties II, LLC, *supra*. Thus, the federal standard must be employed to determine whether or not the awards should be confirmed.

Under the federal standard enunciated in the FAA, the grounds for vacating an award are limited to the following:

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 USC § 10 (a).

To determine whether the arbitrators exceeded their authority, the analysis must focus "on whether the arbitrators had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue,"

DiRussa v Dean Witter Reynolds, 121 F3d 818, 824 (2d Cir 1997), cert denied 522 US 1049 (1998). Further, the interpretation of arbitrators with respect to issues and the scope of their authority is accorded substantial deference, and will not be overturned unless there is no support at all justifying the decision, United Transp. Union Local 1589 v Suburban Tr. Corp., 51 F3d 376, 379 (3d Cir 1995).

In addition to the above grounds as a basis for vacating an award, federal law permits an award to be vacated if it exhibits “manifest disregard of law,” Duferco Intl. Steel Trading v T. Klaveness Shipping A/S, 333 F3d 383, 388 (2d Cir 2003)(citations omitted); Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, 480 (2006). Manifest disregard is a “severely limited” doctrine, Matter of Arbitration No. AAA13-161-0511-85 Under Grain Arbitration Rules, 867 F2d 130, 133 (2d Cir 1989). The courts employing the doctrine “give extreme deference to arbitrators,” DiRussa v Dean Witter Reynolds Inc., 121 F3d at 821. As noted in Duferco, the doctrine requires “more than a simple error in law or a failure by the arbitrators to understand or apply it; and, it is more than an erroneous interpretation of the law,” Duferco, 333 F3d at 389. Thus, an arbitration award must be upheld even if a court “is convinced that the arbitration panel made the wrong call on the law,” as long as there is a barely colorable basis for the decision, Wallace v Buttar, 378 F3d 182, 190 (2d Cir 2004). Respondents, who challenge the award, bear the burden of proof. Willemijn Houdstermaatschappij, BV v Standard Microsystems Corp., 103 F3d 9, 12 (2d Cir 1997); Roffler v Spear, Leeds & Kellogg, 13 AD3d 308 (1st Dept 2004).

A. Arbitrability of the Claims Against Longman:

Respondent Longman asserts that, under South Carolina law, the arbitrators exceeded their authority in both arbitrations by rendering an award against him, since he claims not to have

agreed to arbitration of these disputes. Respondent Longman notes that he executed the Operating Agreement in a limited fashion, only adhering to Sections 3.9 and 3.10, and he did not explicitly agree to the arbitration provision in section 12.18. As a result, Longman contends that he was not a party to, or bound by, the arbitration provision of the Operating Agreement, so that the arbitration tribunals did not have proper authority to issue an award against him. He argues that the arbitration awards against him should be vacated, as no relief in arbitration may be granted against him in the absence of his agreement to arbitrate.

Petitioners contend that, under federal law of arbitrability, the arbitrators' decisions in both proceedings, which subjected Longman to arbitration, are entitled to great deference and should be upheld. Petitioners cite multiple reasons based upon contract and agency law to support the arbitrators' findings, regardless of the limitation on Longman's signature on the Operating Agreement. First, petitioners argue that Longman signed the Operating Agreement, containing the arbitration provision, on behalf of Emerald and also in his individual capacity, assuming the substantive obligations under sections 3.9 and 3.10, and that implicitly subjected him to the procedural and enforcement rules of the Operating Agreement, including the arbitration provision, applicable to these sections, based upon a theory of incorporation by reference. Second, they contend that, under the principles of agency, Longman, as the principal member and manager of Emerald, derived substantial benefits from the Operating Agreement, namely access to the capital provided by Kriti, that he admittedly diverted, so that Emerald's agreement to arbitrate should be binding upon him. Third, they assert a veil piercing/alter ego claim based upon Longman's domination and control of Emerald, his failure to observe the formalities of Emerald and his use of that control to loot ARP-II for his personal gain, and then to

fraudulently cover-up the diversions by the use of false records. Fourth, they argue that Longman should be equitably estopped from asserting lack of arbitrability, because he has benefitted from the Operating Agreement, as indicated above. Lastly, as to the second arbitration, petitioners argue that counsel for Longman affirmatively agreed to the arbitration of the accounting claims without any reservation of rights when he agreed to the severance of those claims for consideration in a second arbitration, and that such action constitutes an assumption of the obligation to arbitrate the accounting claims.

The issue of the arbitrability of the dispute between Kriti and Longman should be decided in accordance with the federal law of arbitrability. The Operating Agreement set up a South Carolina company to develop a real estate venture in Charleston, including a marina and water rights, that included as members Emerald, a Connecticut limited liability company, and Kriti, a Delaware limited liability company. The venture, as the South Carolina court noted, affected interstate commerce, thereby implicating federal law, Ashley River Properties I, LLC v Ashley River Properties II, LLC, *supra*.

While respondent is correct, that arbitration is contractual by nature and "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit," United Steelworkers of America v Warrior & Gulf Navigation Co., 363 US 574,582 (1960). There is a strong and "liberal federal policy favoring arbitration agreements," Mitsubishi Motors Corp. v Soler Chrysler-Plymouth, Inc., 473 US 614,625 (1985)(citations omitted).⁹ Arbitration agreements must not be so broadly construed as to include parties that were not intended by the

⁹Both New York and South Carolina also adhere to the same liberal policy favoring arbitration, see, Zabinski v Bright Acres Assoc., 346 SC 580, 553 SE2d 110 (2001); Matter of Smith Barney Shearson v Sacharow, 91 NY2d 39 (1997).

original contract; however, that does not mean that, under the FAA, "an obligation to arbitrate attaches only to one who has personally signed the written arbitration provision," Fisser v International Bank, 282 F2d 231, 233 (2d Cir 1960). Consequently, the manner or limitation of Longman's signature on the Operating Agreement is not dispositive. Non-signatories may be bound to an arbitration agreement if the "ordinary principles of contract and agency" so require, McAllister Bros., Inc. v A & S Transp. Co., 621 F2d 519, 524 (2d Cir 1980).

The courts have recognized the following five theories for binding parties to arbitration agreements: "1) incorporation by reference; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel." Thomson-CSF, S.A. v American Arbitration Assn, 64 F3d 773, 776 (2d Cir 1995).

First, the conditions prerequisite to piercing the corporate veil were plainly presented. Piercing the corporate veil will occur "to prevent fraud or other wrong, or where a parent dominates and controls a subsidiary," Carte Blanche (Singapore) Pte., Ltd. v Diners Club Intl, Inc., 2 F3d 24, 26 (2d Cir 1993). Here, both conditions were satisfied.

Clearly, Longman, as the principal member and manager of Emerald, controlled and dominated Emerald and, by extension, ARP-II. He admittedly failed to observe the corporate formalities of these entities by taking money deposited by Kriti as capital for ARP-II, and putting it to personal use in accounts he controlled of other entities. He also diverted loan funds intended to pay suppliers, as well. Longman does not dispute this but claims to have returned all the improperly diverted funds and more. He does not dispute that he provided false documents to conceal this diversion. Under these facts, Longman was the puppeteer pulling the strings of Emerald for his own advantage and to the detriment of Kriti and can be held accountable for his

actions as the alter ego of Emerald. Kriti is entitled to pierce the corporate veil to get to Longman.

In addition, there is also a basis for an estoppel. An estoppel will be imposed on non-signatories, binding them to arbitration provisions in agreements where they knowingly received a direct benefit from the agreement. Deloitte Noraudit A/S v Deloitte Haskins & Sells, U.S., 9 F3d 1060 (2d Cir 1993). Here, Longman obtained the much needed capital infusion and personally accessed the funds for his own use. Under such circumstances, the imposition of an estoppel is warranted, International Paper Co. v Schwabedissen Maschinen & Anlagen GmbH, 206 F3d 411 (4th Cir 2000).

As to the second arbitration, there was also an assumption of the obligation to arbitrate. Longman agreed to the second arbitration in the stipulation bifurcating the proceedings. This stipulation on the record, itself, constituted an agreement to arbitrate, or at the very least, a waiver of an objection to arbitration, since there was no preservation of objections to the forum at the time of the stipulation.

Given the findings of alter ego veil piercing, estoppel and assumption, I need not consider the other grounds proposed by petitioners to support arbitrability. The arbitrators had more than ample basis for their decisions to arbitrate the claims of Kriti against Longman, and did not exceed their authority. Under such circumstances, the arbitrators' determinations are to be accorded substantial deference, Matter of Roeffler v Spear, Leeds & Kellogg, 13 AD3d 308 (1st Dept 2004).

B. The Arbitration Panel and the Rights ARP-I

Respondents contend that the arbitrators did not have authority to exercise jurisdiction over ARP-I, or to adjudicate its rights under the Right of First Refusal Agreement, and that therefore, the arbitrators erred in confirming Kriti's rights under that Agreement. Respondents argue that ARP-I was not a party to the arbitration, was never notified of the arbitration, and that the Right of First Refusal Agreement fails to contain a provision for arbitration. In addition, respondents assert that the demand for arbitration did not seek any relief under the Right of First Refusal Agreement, so that the matter was not properly before the arbitrators, and no relief could or should have been granted in arbitration with respect to the parties' rights under that agreement.

Petitioners argue that respondents lack standing to challenge this aspect of the award, and that only ARP-I may interpose these objections, and that ARP-I is not a party to these proceedings. In addition, petitioners assert that they have not attempted in this proceeding or elsewhere to enforce this aspect of the award.

This aspect of the award does not affect the rights of Emerald or Longman. It does have a bearing on the rights of ARP-I, which is not a party to this proceeding. Respondents lack standing to raise these objections, and since petitioners have indicated that they are not seeking enforcement of this provision in this proceeding, the matter is not before me.¹⁰

C. The Right to Exercise the Remedy Provided in Section 13.02 (c)

Respondents complain that the arbitrators in the first arbitration, while recognizing that it would be inequitable to permit an outright forfeiture of respondents' interest in ARP-II, granted Kriti the right to acquire that interest for respondents' unreturned capital contribution of \$2.5

¹⁰ These issues are before the South Carolina Court of Common Pleas, as part of the action that was retained, Ashley River Properties I, LLC v Ashley River Properties II, LLC, supra.

million, when the interest was worth \$10 million. Respondents maintain that this was particularly unfair because the arbitrators had also determined that Kriti had acted in bad faith and oppressively toward respondents regarding the capital call and its actions involving the third-party vendees.¹¹ Respondents argue that equity required that the arbitrators deny any type of forfeiture of their interest or forced undervalued sale, and merely award damages for the failure to timely make the payments.

Kriti contends that the award of the arbitrators was neither a forfeiture, nor inconsistent with the terms of the Operating Agreement and applicable South Carolina law. Kriti asserts that the arbitrators, upon finding a series of egregious defaults on the part of respondents, selected an appropriate remedy that was specifically agreed to and provided for in the parties' agreement, and that the type of remedy is one that the courts of South Carolina will sustain, when the parties have made such provision, and the defaulting party has engaged in a pattern of self-dealing and cover-up.

¹¹ While the award makes statements regarding Kriti's conduct related to the capital call that could be read to potentially support respondents' characterization, the arbitrators did not expressly find that Kriti had acted in bad faith and oppressively toward respondents regarding the capital call. At issue was a clause in the Operating Agreement providing that if Emerald "shall contest any of the foregoing remedies and shall not prevail, then [Emerald] shall forfeit all of its Membership Shares in the Company" The award cites South Carolina law regarding forfeitures, not regarding capital calls, thus underscoring that the arbitrators' focus was on probable cause for the contest, not on the bona fides of the capital call itself.

As for the third party vendees, the arbitrators stated merely, "[w]e question Kriti's conduct in encouraging some of these third parties to assert claims against ARP-II and accept partial reimbursement of their deposits. However, we are persuaded that Emerald or Longman or another entity controlled by Longman (a) received and kept the deposits, (b) did not use these funds for the benefit of ARP-II and (c) ARP-II must now resolve all these third party actions." This cannot be characterized as a finding that Kriti's conduct regarding the third parties was oppressive or in bad faith.

Here, it is apparent that the arbitrators found respondents to have engaged in a serious pattern of defaults that included self-dealing, misappropriation and misrepresentation. Under the parties' agreement, in the event of default, Kriti could seek to avail itself of the various remedies in Section 13.02. Kriti did terminate Emerald's voting rights under Section 13.02 (a), and it did terminate the Project Development Agreement with Ripley, under 13.02 (b). Kriti also sought forfeiture of Emerald's interest in ARP-II for contesting its remedies and not prevailing, under 13.02 (c). The arbitrators found that Emerald had probable cause to contest the capital call and refused to permit the extreme remedy of forfeiture of Emerald's interest. The arbitrators, however, did confirm Kriti's right to buy out Emerald's interest for its unreturned capital contribution, thereby leaving respondents with something less than they would like in return for their interest.

The Operating Agreement, in Section 13.02, provided the arbitrators with various options upon the finding of a default. Here, there were several defaults that involved misappropriation, self-dealing and misrepresentation, but the arbitrators also concluded that, as a matter of fairness, forfeiture of Emerald's interest was not indicated. As a consequence of weighing the equities, the arbitrators declined to award the most drastic remedy, and provided for some limited compensation of respondents for their interest, based upon one of the remedies outlined in the Operating Agreement.

Under South Carolina law, contracts that clearly provide for the repurchase of a member's share for an amount less than market value are enforceable, even if enforcement proves to be harsh, oppressive and confiscatory, McPherson v J. E. Serrine & Co., 206 SC 183, 33 SE2d 501 (1945). The courts in South Carolina have held that "[t]he Court's duty is to enforce the contract

made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." Jordan v Security Group, Inc., 311 SC 227, 230, 428 SE2d 705, 707 (1973); Steffenson v Olsen, 360 SC 318, 323, 600 SE2d 129, 132 (Ct App 2004).

Applying these principles, the buyout remedy contained in the arbitrators' award herein is supported by the record before them.

Based upon the arbitrators' findings of multiple defaults, there was more than a colorable basis for the remedy selected, even if the result may be harsh. Consequently, the arbitrators did not manifestly disregard the law. I will defer to the arbitrators' choice of a remedy.

D. Rejection of the Waiver Defense

Respondents contend that Kriti's conduct, in not declaring a default when it discovered the diversion of funds, and its subsequent acceptance of repayment, constituted a waiver of the default so that the arbitrators' rejection of the defense was in manifest disregard of the law. Respondents cite Liberty Builders, Inc. v Horton, 336 SC 658, 521 SE2d 749 (Ct App 1999) for the proposition that a course of conduct can constitute a waiver, despite a contractual provision providing for no waiver.

Petitioners argue that waiver is the knowledgeable and voluntary relinquishment of a right, and that in August 2004, when Kriti refrained from calling the default and later began accepting repayment, it did not know of the other defaults of respondents, so that it could not make a knowing and intelligent waiver. Further, Kriti claims that its restraint on calling the default was conditioned on full repayment of the monies improperly taken, that the parties agreed that the refinancing of ARP-I was short the funds to replace the diverted monies by \$155,000, and that the financial statements issued by ARP-II after the refinance reflected an outstanding

loan to respondents, so that the arbitrators had a basis for finding that the condition was not met and no waiver effected.

Under South Carolina law, waiver is the voluntary and intentional relinquishment of a known right and “[a]cts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute a waiver,” Bonnette v State of South Carolina, 277 SC 17, 18, 282 SE2d 597, 598 (1981). Further, “the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended,” Historic Charleston Holdings, LLC v Mallon, 365 SC 524, 536-37, 617 SE2d 388, 394-95 (Ct App 2005).

The arbitrators had evidence that Kriti was not aware of the misrepresentations regarding \$800,000 in claims arising from the undisclosed buyer contracts and Sapphire’s bankruptcy’s effect on the assignment of the Collins Property. Under such circumstances, there was evidence before the arbitrators that Kriti did not have complete knowledge of all the material facts upon which to base its decision. Thus, while the conduct may appear to be a failure to insist upon a right, the predicate knowledge for such conduct was not available to Kriti at the time, so as to create the conditions for a waiver. The arbitrators had an independent basis for rejecting the waiver defense, predicated upon Section 12.5 of the Operating Agreement, that provided that delay in calling a default would not constitute a waiver and that a writing was required.

Moreover, the conduct that respondents rely upon, namely the forbearance in calling a default, was conditional on repayment. There was evidence before the arbitrators that the condition was not satisfied. That the accounting and related claims had been withdrawn and referred to the second arbitration does not negate the proof presented in the first, as to whether

the condition was satisfied.

Once again, the arbitrators had a colorable basis for their conclusion, and as such, they did not manifestly disregard the law.

E. Rejection of the Defense of Ratification

Respondents argue that the arbitrators manifestly disregarded the law when they rejected the defense of ratification¹² interposed with regard to Kriti's actions in relation to the hiring of Knetzer and MacIntyre. Respondents argue that the arbitrators were aware of Kriti's application for the preliminary injunction before the federal court, and that Kriti had represented to the federal court that Kriti thought the Centex offer was "great" and that its loss represented "irreparable injury" to ARP-II. Respondents assert that such admission before the federal court and arbitrators, along with the entry into talks with Centex, constituted ratification of the engagement of the brokers under Section 5.4 of the Operating Agreement.

Petitioners maintain that, upon learning of the retention of the brokers by Longman, Kriti objected and immediately called a default. In particular, Kriti questioned whether the brokers were licensed in South Carolina. They repeated their objections some months later. While Kriti engaged in some discussions with Centex, those discussions proved fruitless and no deal was consummated.

Under Section 5.2 (m) of the Operating Agreement, Kriti's consent was required for the retention of any broker. Longman clearly did not obtain such consent, and there was a prompt rejection of the retention by Kriti. The arbitrators had a factual basis for finding a breach of

¹² While respondents denominate the defense as ratification, the arbitrators treated the defense as a second claim of waiver. Regardless of how denominated, similar considerations would apply.

Section 5.2 (m). The arbitrators found that Kriti's subsequent conduct, specifically, its communications, was not sufficient to constitute a waiver. The conduct of Kriti does not appear to be so unequivocal as to constitute a waiver or ratification, particularly where the talks proved fruitless and no deal was finalized with Centex. The arbitrators had a colorable basis for their determination and their factual conclusion should be given deference. Once again, this is not a manifest disregard of the law.

There is no basis for vacating the first arbitration award. The motion to confirm said award is granted.

F. Specific Performance

Petitioners seek in their judgment an order directing specific performance of the buyout of Emerald's membership shares. Respondents oppose the application because they claim that these issues postdate the arbitration and are not part of this action, but rather belong in the companion matter, Emerald Investments, LLC v Kriti Ripley, LLC, Index No. 111957/06, presently pending before me.

The arbitrators directed that the buyout be performed in accordance with the terms of the Operating Agreement. Here, the arbitration award did not explicitly provide for specific performance, but permitted Kriti to exercise the buyout under certain conditions. Whether or not the post-arbitration conduct of petitioner satisfied those conditions is not properly before me on the motion to confirm. Nothing herein is intended to preclude Kriti from seeking specific performance in any other action, including the companion action presently pending before me.

G. Award of Expert Costs and Expenses in the Second Arbitration

Respondents contend that the arbitrator in the second arbitration exceeded his authority

by awarding expert costs and expenses that were in part attributable to the first arbitration. Respondents contend that the first arbitration award denied such costs and that they were not referred to in the stipulation bifurcating the accounting claims.

Petitioners argue that both sides sought for recovery their respective accounting experts' fees in the second arbitration, so that the matter was clearly submitted to the arbitrator, and that respondents' current argument is in contradiction to the position they took during that arbitration.

In determining whether the arbitrator exceeded his authority, the focus is on the parties' submissions and/or the arbitration agreement, and not whether the arbitrator decided the matter correctly. Here, the parties referred the accounting claims to the second arbitrator. Subsumed within those claims were the costs and expenses of the experts, and both parties submitted claims for reimbursement of such costs and expenses, including monies attributable to accounting work for the first arbitration. Under these circumstances, the arbitrator had before him the complete claim for accounting experts. The first arbitration award did not provide for such costs; it only provided for legal fees and disbursements. The bulk of the accounting expert's work was for the second arbitration, and both sides operated under the assumption that the arbitrator in the second arbitration could provide relief for the entire accounting bill of one side or the other. Respondents should not be heard to now claim that the arbitrator did not have authority to award such costs.

There is no basis for vacating the second arbitration award. The petition to confirm is granted.

Accordingly, it is

ORDERED that the motions to dismiss or stay the petitions are denied; and it is further

ORDERED that the petitions to confirm the two arbitration awards are granted, except that there shall be no award of specific performance.

Settle judgment on notice in conformity with this decision.

Dated: 2/15/08

ENTER:



IRA GAMMERMAN
J.H.O.

~~FILED~~
FEB 20 2008
NEW YORK
COUNTY CLERK'S OFFICE

EXHIBIT H

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ORIGINAL

-----X
IN THE MATTER OF THE ARBITRATION BETWEEN

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

INDEX NO. 650196/06

PETITIONERS,

JUDGMENT

-against-

EMERALD INVESTMENTS, LLC
and STUART LONGMAN

RESPONDENTS.

-----X

Upon the Decision and Order of Hon. Ira Gammerman, J.H.O., dated February 15, 2008 and filed February 20, 2008, it is:

I. ADJUDGED AND DECREED that the Award of Arbitrators rendered on October 31, 2005, as modified on December 9, 2005, in the arbitration case *In the Matter of the Arbitration between Kriti Ripley, LLC & Ashley River Properties II, LLC, Claimants, and Emerald Investments, LLC and Stuart Longman, Respondents* (American Arbitration Association Case No. 13 115 Y 00698 05) is confirmed in all respects as against Respondents Emerald Investments, LLC, a Connecticut limited liability company with its principal place of business located at 424 West Mountain Drive, Ridgefield, CT 06877 ("Emerald") and Stuart Longman, residing at 424 West Mountain Drive, Ridgefield, CT 06877 ("Longman"), and more specifically as follows:

A. That Petitioners Kriti Ripley, LLC ("Kriti") and Ashley River Properties II, LLC ("ARP-II") recover of Emerald and Longman, jointly and severally, the sum of Seven Hundred Six Thousand Two Hundred Twenty-Five Dollars (\$706,225.00), together with interest from October 31, 2005 until the date of Judgment in the amount of \$144,751.94 calculated at the South Carolina statutory rate of eight and three-quarters percent (8.75%);

B. That, as of January 14, 2005, Emerald forfeited all voting rights in ARP-II;

C. That, as of January 14, 2005, Kriti and ARP-II validly terminated the Project Development Agreement, dated December 30, 2003, without penalty or premium; and

D. That Kriti has the right to purchase the Emerald Member shares for Two Million Five Hundred Thousand Dollars (\$2,500,000.00) subject to no offsets except for the items enumerated in Section 10 of the award, which include Four Hundred Thousand Dollars (\$400,000.00) representing indemnification for third party vendor claims, Two Hundred and Fifty One Thousand Dollars (\$251,000.00) representing legal fees, and Fifty Five Thousand Two Hundred and Twenty Five Dollars (\$55,225.00) representing administrative and arbitrators' fees for a total of Seven Hundred Six Thousand and Two Hundred and Twenty Five Dollars (\$706, 225.00), less any amounts already paid by respondents under Paragraph I. A of this Judgment at the time of closing. The closing shall take place pursuant to the terms of Section 13.02 (c) of the Operating Agreement dated December 29, 2003, (the "Buyout Right");

E. That Kriti's right to specific performance or otherwise to enforce its Buyout Right against Emerald is denied without prejudice to Kriti seeking such relief in another action or proceeding, including the action pending before this Court entitled *Emerald Investments, LLC v. Kriti Ripley, LLC*, Index No. 111957/06;

and it is further

II. ADJUDGED AND DECREED that the Award of Arbitrator rendered on July 22, 2006, as modified on July 28, 2006 in the arbitration case *In the Matter of the Arbitration between Kriti Ripley, LLC & Ashley River Properties II, LLC, Claimants, and Emerald Investments, LLC and Stuart Longman, Respondents* (American Arbitration Association Case No. 13 115 02570 05) is

and it is further

III. ADJUDGED AND DECREED that the Clerk tax legal costs against Respondents in the amount of 900, as set forth in the annexed bill of costs and as permitted by law;

and it is further;

IV. ADJUDGED AND DECREED, that the petitioners Kriti and ARP-II recover the total money judgment awarded herein, jointly and severally, against Respondents Emerald and Longman, inclusive of interest and the costs of this proceeding, amounting to the sum of 1,184,581⁷², and that petitioners have execution therefor.

Judgment signed this 27 day of March 2008

FILED
APR 02 2008
COUNTY CLERK'S OFFICE
NEW YORK

16
Ira Gammernan
Judicial Hearing Officer

Neuman Goodman
CLERK

PETITIONERS

345 E. 37TH STREET
NEW YORK, NY 10016

RAND ROSENZWEIG
 RADLEY & GORDON LLP
 Attorneys for Petitioners
 50 Main Street, 12th Floor
 White Plains, New York 10606

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

-----X
 IN THE MATTER OF THE ARBITRATION BETWEEN

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

INDEX NO. 650196/06

-against-

PETITIONERS,

INTEREST CALCULATION AND
 BILL OF COSTS

EMERALD INVESTMENTS, LLC
 and STUART LONGMAN

RESPONDENTS.

-----X
 Principal pursuant to paragraph I.A of the Judgment \$ 706,225.00
 Interest from 10/31/05 to 03/04/08 at 8.75% (SC Statutory Rate) \$ 144,751.94

 Principal pursuant to paragraph II.A of the Judgment \$ 143,340.00
 Interest from 11/01/05 to 03/04/08 at 8.75% (SC Statutory Rate) \$ 29,345.43

 Principal pursuant to paragraph II.B of the Judgment \$ 133,653.14
 Interest from 06/22/06 to 03/04/08 at 8.75% (SC Statutory Rate) \$ 19,896.92

 Principal pursuant to paragraph II.C of the Judgment \$ 5,631.00
 Interest from 06/22/06 to 03/04/08 at 8.75% (SC Statutory Rate) \$ 838.29

 SUBTOTAL \$1,183,681.72
 Per diem at 8.75% after 03/04/2008 = \$ 237.05

Statutory Costs
 CPLR § 8201

\$ 200

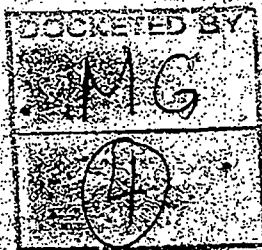
Disbursements
 Fee for Index No.
 Service of Process
 Request for Judicial Intervention

\$ 420.00
 \$ 320.00
 \$ 200.00

TOTAL

\$ 900

EVERY CERTIFY THAT I HAVE
 REVIEWED THIS BILL OF COSTS AT
 900
 APR 02 2008
 [Signature]
 CLERK



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FILED AND
DOCKETED

APR 02 2008
3:30 PM

AT
NY. CO. CLERK'S OFFICE

INDEX No. 850.196/2008

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

KRIM RIPLEY, LLC AND
ASHLEY RIVER PROPERTIES II, LLC.

PETITIONERS

AGAINST

EMERALD INVESTMENTS, LLC AND
STUART LONGMAN

RESPONDENTS

NO VERIFICATION

JUDGMENT

RAND ROSENZWEIG
RADLEY & GORDON LLP

ATTORNEYS FOR DEFENDANTS

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(914) 406-7000

EXHIBIT I

EMERALD INVESTMENTS, LLC,
Claimant,
v.
KRITI RIPLEY, LLC,
Respondent,
and
ASHLEY RIVER PROPERTIES II, LLC
Nominal Respondent

1. This action is brought by Emerald Investments, LLC (“Emerald”), which seeks a declaration that it is the rightful owner of 70% of the Membership Shares of Ashley River Properties II, LLC (“ARP-II”), which operates the Ripley Light Yacht Club, a marina in Charleston, South Carolina. Emerald also seeks on behalf of itself and ARP-II, among other things, (a) a declaration that the more than \$7 million of debt improperly imposed on ARP-II by affiliates of Respondent, Kriti Ripley, LLC (“Kriti”) should first be recharacterized as equity and/or equitably subordinated, and that even that additional equity was improper because the requirements for capital calls at ARP-II were not followed and also the expenses allegedly incurred for which the equity was used were wasteful and in breach of the duties owed by Kriti to ARP-II and Emerald; and (b) damages to both Emerald and ARP-II resulting from the self-

interested and wasteful actions taken by Kriti, in amounts greater than this improper and unnecessary additional equity.

THE PARTIES AND JURISDICTION

2. Claimant Emerald is a Connecticut limited liability company that has its principal place of business in the State of Connecticut.

3. Respondent Kriti is a Delaware limited liability company that has its principal place of business in the State of New York.

4. Nominal Respondent ARP-II is a limited liability company organized under the laws of South Carolina, and has its principal place of business in Charleston, South Carolina. ARP-II's operations are governed by the Limited Liability Company Act of South Carolina and the Operating Agreement of Ashley River Properties II, LLC, dated December 29, 2003, as amended (the "Operating Agreement"). The Operating Agreement, of which ARP-II is a signatory, governs the rights of ARP-II and the Members of ARP-II, which consist of Emerald and Kriti. Many of the actions by Kriti at issue in this arbitration caused damages to ARP-II; however, since Kriti is in control of ARP-II and thus will not bring these claims against itself, Emerald is asserting these claims on a derivative basis. Because Kriti caused the damages to ARP-II, it would be futile to request that Kriti bring these claims against itself and thus demand on Kriti to do so is excused.

5. Pursuant to the Operating Agreement, ARP-II, Kriti and Emerald agreed to arbitrate any dispute or controversy arising under or in connection with the Operating Agreement before this tribunal. Section 12.18 of the Operating Agreement provides:

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 reimburse the reasonable attorneys' fees and disbursements of the prevailing party or parties.

6. Section 12.4 of the Operating Agreement provides that the Operating Agreement "shall be governed by and construed in accordance with the laws of the State of South Carolina."

FACTS

7. Beginning in 2000, Emerald began the development of a mixed-use residential condominium and marina project along a riverfront site on the Ashley River in Charleston, South Carolina known as the Ripley Light Yacht Club Marina and Condominiums (the "Ripley Light Project"). The Ripley Light Project was composed of two parcels of real estate, one of which was owned by ARP-II.

8. Until 2003, all interests in ARP-II were owned by Emerald. On December 29, 2003, Emerald entered into the Operating Agreement with Kriti through which Kriti acquired a membership interest in ARP-II. As set forth in the Operating Agreement, Kriti owned 30% of the membership interests in ARP-II and Emerald retained 70% along with operational control of ARP-II. Emerald and Kriti also entered into a Project Development Agreement, also dated December 29, 2003, in which they agreed to carry on the Ripley Light Project through a joint venture.

Kriti's Improper Capital Call

9. As a result of a dispute between Emerald and Kriti over the management of ARP-II, which subsequently was submitted to arbitration before the American Arbitration Association on March 23, 2005 (the "2005 Arbitration"), on January 14, 2005, Kriti terminated the Project Development Agreement, alleged a default by Emerald under the Operating Agreement, and assumed sole management of ARP-II from Emerald. The Award issued in the 2005 Arbitration generally supported the actions taken by Kriti.

10. However, as it had planned even before assuming operational control of ARP-II, almost immediately upon taking control, Kriti issued an improper and defective \$2 million capital call, 70% of which was to be borne by Emerald in accordance with its membership interests (the "Capital Call"). Kriti never explained why such a capital call was necessary and, in fact, the Capital Call was unnecessary and improper because, among other things, (a) a principal component of the capital call budget – the construction of a bulkhead – was wasteful and in breach of Kriti's duties to ARP-II and Emerald and also not necessary, prudent or reasonable, certainly not in the form proposed by Kriti, if at all; (b) there were additional sources of funding that would have been sufficient to satisfy ARP-II's purported capital needs; (c) potential buyers had emerged offering to buy the Ripley Light Project, such as Centex Destination Properties ("Centex") and Property Management Group ("PMG"), which would have obviated the need to perform the work ostensibly called for in the capital call budget and obviated the need for the capital call; and (d) ARP-II did not even fund or use the requested capital, to the extent it was ever used, until many months after the purported Capital Call.

11. In reality, the Capital Call was simply a contrivance by Kriti to dilute Emerald's economic interest in ARP-II, which was Kriti's plan from the outset of its relationship

with Emerald. Indeed, Kriti took numerous steps in its effort to dilute Emerald that were highly detrimental to ARP-II and belie any propriety with respect to the Capital Call. For example, as Kriti well knew, Emerald already had secured a \$2.125 million loan modification from Marshall Bank ("Marshall"), the existing lender to ARP II, to complete the construction of the Ripley Light marina. However, after taking over management of ARP-II, Kriti refused to sign the Marshall loan documents, falsely claiming that it had no idea Emerald's principal, Stuart Longman, had been seeking the financing.

12. Integral to Kriti's plan to scuttle the existing financing arrangement with Marshall that would have prevented Kriti from making its Capital Call, Kriti's principal, Davidson Williams, approached customers of Ripley Light Development, a predecessor-in-interest of ARP-II, and directly or indirectly convinced them to assert claims against Mr. Longman's interests, including ARP-II, and to refuse to settle their claims for less than full value. Indeed, when Mr. Longman negotiated an agreement in principle with one customer for a settlement at less than the full amount of the claim, on information and belief, Mr. Williams induced the customer to renege on the agreement and instead demand the full amount of the claim before that customer would release the claim against Mr. Longman and ARP-II. As a fiduciary of ARP-II and Emerald, Kriti should have been attempting to convince the customers *not* to assert claims against ARP-II or, at a minimum, to compromise on their claims to reduce the potential liability to ARP-II. However, while that approach would have benefited ARP-II, it did not serve Kriti's interests, which were to scuttle the financing in order to dilute and eventually to drive out Emerald from ARP-II.

13. What is more, Kriti made the Capital Call in a way that inappropriately would have required Emerald to pay effectively double its \$1.4 million share of the Capital Call

in order to satisfy the call, and effectively would have forced Emerald to capitulate to Kriti's damages claims, some of which were rejected by the arbitrators in 2005 because of Kriti's misconduct. Thus, before Kriti would consider any capital contribution by Emerald as satisfying the Capital Call, Emerald was required to pay a \$155,000 obligation disputed by Emerald, and set up a reserve of more than \$1 million to pay the full value of certain customer claims. In other words, Emerald could have paid the \$1.4 million requested in the Capital Call, and still would have been deemed to be in default by Kriti.

14. In light of the patent impropriety of the Capital Call, Emerald challenged the Capital Call and refused to fund its purported share of the Capital Call (even though it could have funded the Call), which refusal the 2005 Arbitration panel found to be reasonable. As that panel explained:

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

15. Notwithstanding the 2005 Arbitration panel's findings, Kriti nevertheless has used the improper Capital Call as a basis to wrongly – and without Emerald's knowledge

until more than one year after the fact – dilute Emerald’s membership interest in ARP-II from 70% to approximately 21%. Kriti relied upon a provision in the Operating Agreement that it could contribute Emerald’s share of the Capital Call and dilute Emerald’s interest, on a two for one basis, as a result of that contribution (the “Default Contribution”). However, in order to effect a dilution, the Operating Agreement requires that the Default Contribution be made “at the time [Emerald] failed to make its contribution,” which was March 30, 2005. Kriti did not make any Default Contribution until June 2005 and, because Kriti diverted funds purportedly contributed pursuant to the Capital Call to pay expenses outside the scope of the Capital Call, and because subsequent Kriti contributions made to pay for items identified in the capital call budget were reimbursed to Kriti, Kriti in fact never fully paid Emerald’s portion of the Capital Call as required under the Operating Agreement.

16. Accordingly, even if the Capital Call were proper, necessary and made in good faith – which it was not – Kriti’s purported dilution of Emerald’s membership interest from 70% to 21% is invalid and should be disallowed.

Kriti’s Breaches, Mismanagement and Misappropriation of ARP-II’s Property

17. In addition to the improper Capital Call, Kriti, as manager of ARP-II, and in breach of its duties, has repeatedly refused to conduct the affairs of ARP-II in the best interests of ARP-II and its members or in any way that would comply with any business judgment, and has misappropriated the funds of ARP-II for Kriti’s own purposes and not for the benefit of ARP-II.

18. Kriti has refused to act on opportunities that would have returned substantial value to ARP-II’s members, including Emerald. At the time Kriti took over control of the management of ARP-II, buyers had expressed interest in the Ripley Light Project, with

Centex offering \$14.5 million for the property, and PMG offering \$15.8 million. Acceptance of either of those offers would have yielded a return of several million dollars to both Emerald and Kriti over their initial capital contributions and ARP-II's then approximately \$4.7 million debt. However, Kriti refused to sell the Ripley Light Project, notwithstanding Emerald's warnings that the Charleston real estate market was experiencing a bubble that could burst and rapidly deteriorate. Other well-qualified buyers subsequently made offers for the Ripley Light Project, including one for approximately \$20 million by Lucorp in early 2008, which offer also was rejected by Kriti without notice or consultation with Emerald. As forewarned by Emerald, the Charleston real estate bubble has burst, and the most recent appraisal of the Ripley Light Project in October 2009 places its value at approximately \$10 million, or half what was offered by Lucorp in 2008, and even well less than what was offered in 2005. Under the circumstances, no reasonable person would have continued to hold or develop the Ripley Light Project as Kriti has.

19. Compounding the diminished market value of the Ripley Light Project is the fact that Kriti has caused ARP-II to nearly triple its purported debt burden since taking over management, such that ARP-II's liabilities now exceed its assets. Kriti caused ARP-II to take on more than \$12.8 million in purported debt, currently consisting of \$5.3 million outstanding on the Bank of America loan, and more than \$7 million owing to Kriti affiliates pursuant to purported promissory notes.

20. ARP-II currently does not have sufficient operating income to service its debt, nor has it ever had sufficient operating income since ARP-II obtained the Bank of America loan. Instead, ARP-II was forced to cannibalize the Bank of America loan to make interest payments, which prevented ARP-II from using a substantial portion of the Bank of America loan proceeds for its intended purposes.

21. When the Bank of America loan funds were exhausted, which upon information and belief occurred in or around August 2007, ARP-II was forced by Kriti to enter into alleged "promissory notes" with Williams and Kriti Holdings, Inc. ("KHI"), a corporate parent of Kriti and guarantor of the Bank of America loan, to pay the Bank of America loan interest and other obligations. Those "notes," which now total nearly \$3.5 million in outstanding principal and accrued interest, are actually equity in disguise as shown by the fact that they are unsecured, have no fixed maturity date, no regular interest payments (although they purport to charge 10% interest on the advances), and are designed to apply any payments on the notes – of which there have been none – to pay down principal first. Moreover, the notes do not provide lump sum financing to ARP-II, but rather reflect infusions of cash which had already been made on an as-needed basis, which then are reflected in an after-the-fact amendment to the notes.

22. With ARP-II, as managed by Kriti, still continually unable to timely make its interest payments to Bank of America, and faced with the near-halving of the market value of the Ripley Light Project, in March 2010 Bank of America forced ARP-II to pay down approximately \$3.7 million in outstanding principal, interest and late fees owing on the Bank of America loan. Having no ability to make the required payment to Bank of America, ARP-II executed a \$4 million promissory note with Navarino Oil, another Kriti affiliate, on identical terms to those of the Williams and KHI notes, that is disguised equity.

23. The Williams, KHI and Navarino notes constitute capital contributions and not debt, but by characterizing them as debt, and to the extent they continue to be treated as debt, Kriti has caused ARP-II to fall into a debt spiral where, for the indefinite future, ARP-II will be paying interest on interest as it continues to borrow money from KHI at 10% to pay off the Bank of America loan interest, without any current prospect of being able to pay off any of

the outstanding loan principal. Upon information and belief, Kriti has caused this to happen, even though it plainly damages ARP-II, because it allows Kriti to inflate ARP-II's balance sheet assets by permitting it to improperly capitalize interest payments, and because it allows Kriti to give its capital contributions a higher priority in the event of a sale of the Ripley Light Project or ARP-II's bankruptcy or dissolution (an action for which has been initiated in South Carolina state court, but which has been stayed pending a determination of the underlying factual disputes in this arbitration).

24. In addition, this recharacterized equity or capital is improper because Kriti was required under the Operating Agreement to raise any additional capital or equity through a capital call and no capital call was made in connection with this additional equity; thus the additional capital or equity is improper. Further, this additional equity was unnecessary and improper because the expenses to which it has been applied were unnecessary and were incurred in breach of Kriti's duties both to ARP-II and to Emerald.

25. For example, ARP-II's debt spiral has been exacerbated by Kriti's patent self dealing and improper use of ARP-II funds. Thus, among other things, Kriti caused ARP-II to divert nearly \$500,000 in loan proceeds to Kriti to pay Kriti's legal expenses associated with the 2005 Arbitration. Kriti caused ARP-II to divert more than \$200,000 in loan proceeds to reimburse Kriti for "capital contributions" to ARP-II in direct violation of the Operating Agreement's provisions governing distributions to members. Kriti caused ARP-II to incur tens of thousands of dollars in debt *owing to Kriti affiliates* to pay the salary and expenses of Ryan Black in 2008 and 2009, even though Black was living in New York City and in reality was working for Kriti Management, another affiliate of Kriti. And, rather than applying loan funds to legitimate expenses, Kriti caused ARP-II to divert nearly \$350,000 in loan proceeds to pay

condominium development expenses even though the Bank of America loan agreement expressly prohibited use of loan funds for that purpose unless certain conditions were met, which never happened.

26. Moreover, while Black was still living in Charleston and working at the marina, he was also involved in a remodeling business through an entity in which he was a 50% partner, Archilite LLC. This company had its own office, employees, vehicles, and customers, and was completely unrelated to ARP-II or any work done on ARP-II's behalf. Yet, upon information and belief, ARP-II has been billed for projects and materials undertaken or provided by Archilite LLC, and Black has misappropriated, among other things, furniture and fixtures belonging to ARP-II for use at Archilite LLC, all with the knowledge and consent of Kriti. In addition to Kriti's self dealing and unauthorized use of ARP-II funds, Kriti also caused ARP-II to incur expenses and risk liabilities that no prudent person or person exercising business judgment would have allowed, in violation of the duty of care and constituting waste. For example, notwithstanding ARP-II's negative cash flow, Kriti caused ARP-II to spend more than \$400,000 on a 900 sqf marina building and deck canopy. Also, despite having no experience whatever, Williams and Black caused ARP-II to undertake a dredging project through their own newly-formed company that ended up costing ARP-II in excess of \$200,000 more than if an experienced dredging contractor had been employed, and which unreasonably exposed ARP-II to substantial potential liability for damage to the numerous, and in many instances very expensive, boats using the surrounding marinas. Finally, Kriti repeatedly – and often intentionally – has caused ARP-II to fail to pay its obligations when due, resulting in numerous late fees and penalties, at least two mechanic's liens being filed against ARP-II, and threats by Bank of America to declare ARP-II in default of its Bank of America loan.

KRITI'S BREACH OF ITS OBLIGATIONS TO EMERALD

27. Although Emerald has been a member of ARP-II throughout the entire period during which Kriti has managed the company, Kriti consistently has treated Emerald, at best, as if it had no interest in ARP-II at all. Thus, notwithstanding repeated requests for access to the books and records of ARP-II as required under Section 12.1 of the Operating Agreement and South Carolina law, Kriti took the position that it has "no obligation to grant [Emerald] access to ARP-2's offices or permit [Emerald] or [its] agents to inspect ARP-2's books and records." In fact, since early 2005, Emerald has not received company information from Kriti other than through discovery in litigation proceedings.

28. Among the books and records that only now have been provided to Emerald through litigation discovery, despite Emerald's repeated requests, are: (a) records, correspondence, e-mails, or other communications between ARP-II and Bank of America involving the \$9 million loan to ARP-II, or any default, and/or negotiations of terms for a loan extension; (b) account records, checks, and bank statements for any other bank accounts into which transfers of funds were made by ARP-II, Kriti, or Williams, from ARP-II's Bank of America account into other accounts controlled or held by Kriti or ARP-II; (c) account records, checks, and bank statements for ARP-II for 2005 and 2006, and since September 2009; (d) ARP-II's general ledgers, operating account ledgers, company books, and other such financial records for 2005 and 2006; (e) records showing or documenting ARP-II's cash balances from 2005 until the present; (f) invoices, vendor files, cost records, and payment records related to construction of marina slips in 2005 and/or 2006; (g) records, correspondence, e-mails, or other communications involving offers to purchase the marina property; (h) marina customer and slip

lists for 2006 to present; and (i) marina client contracts and payment records for leases of marina slips from 2006 until the present.

29. Moreover, in addition to denying Emerald access to ARP-II's books and records, Kriti systematically has withheld material information regarding ARP-II that has prevented Emerald from protecting and/or exercising its membership rights. Among other things, Kriti has failed to disclose and/or consult Emerald with respect to (a) the numerous offers its has received (and rejected) for the Ripley Light Project; (b) the terms of ARP-II's debt obligations which, in the case of the Bank of America loan, at one point required Emerald's removal from membership in ARP-II; (c) Kriti's plans to expand the marina that have been offered by Kriti as an excuse for rejecting bona fide offers for the Ripley Light Project; (d) Kriti's loading on substantial amounts of additional debt to Kriti affiliates, which in fact was disguised equity; (e) Kriti failing to make capital calls for this additional equity; (f) Kriti's dredging project; and (g) construction plans relating to the marina and marina building.

30. Kriti has not stopped at merely shutting Emerald out of ARP-II. Kriti persistently has disparaged Emerald and Mr. Longman in communications with ARP-II's employees, lenders and potential purchasers. For example, Kriti has caused ARP-II to litigate against Ashley River Properties I, LLC ("ARP-I"), another entity controlled by Mr. Longman and Emerald. That case involves one of the Ripley Light Development customers, whose claim ARP-II was directed by the 2005 Arbitration panel to satisfy at its own expense because of Kriti's misconduct. Yet, rather than simply resolving the dispute as directed and obtaining a requisite release, Kriti refused to sign a settlement agreement that provided a release from the customer to ARP-I, which the customer was willing to sign, and then caused ARP-II to buy the customer's claim against ARP-I, which ARP-II continues to assert.

CAUSES OF ACTION

Count I – Breach of the Operating Agreement

31. Emerald repeats and realleges the allegations in paragraphs 1 through 30 with the same force and effect as if set forth in full herein.

32. Under Section 6.1(a) of the Operating Agreement, Kriti owed Emerald a fiduciary duty of loyalty in the use of ARP-II's property, profit or benefit derived by Kriti in the operation of ARP-II's affairs. Specifically, Section 6.1(a) provides that Kriti must "account to [ARP-II] and to hold as trustee for [ARP-II] any property, profit or benefit derived by [Kriti] in the conduct or winding up of [ARP-II's] business or derived from a use by [Kriti] of [ARP-II's] property, including the appropriation of a[n] [ARP-II] opportunity."

33. Kriti breached the aforesaid duty and Section 6.1(a) of the Operating Agreement by, among other things, (a) causing ARP-II to distribute to Kriti nearly \$700,000 in loan proceeds to pay Kriti's legal expenses from the 2005 Arbitration and to reimburse Kriti for capital contributions; (b) diverting ARP-II's funds to pay for Black's employment by Kriti Management; (c) diverting Bank of America loan proceeds to pay condominium development costs in violation of the Bank of America loan agreement; (d) loading on substantial amounts of additional debt to Kriti affiliates, which in fact was disguised equity; (e) failing to make capital calls for this additional equity; (f) diverting ARP-II's funds and other property to projects undertaken by an entity, Archilite LLC, in which ARP-II has no interest; and (g) failing to account for the use of ARP-II's assets by refusing to provide Emerald access to ARP-II's books and records.

34. Under Section 6.2 of the Operating Agreement, Kriti owed Emerald a fiduciary duty of care in carrying out the duties as manager of ARP-II. Specifically, Section 6.2

provides that: "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 [ARP-II]."

35. Kriti breached the aforesaid duty and Section 6.2 of the Operating Agreement in that it failed to conduct the business of ARP-II in the best interests of ARP-II by, among other things, (a) rejecting offers made by Centex and others to purchase ARP-II's interest in the Ripley Light Project at a time when those interests were worth more than \$15 million; (b) causing ARP-II to take on more than \$12.5 million in new debt – more than \$7 million of which actually were mischaracterized capital contributions – so that the present value of ARP-II's interest in the Ripley Light Project is less than its debt; (c) causing ARP-II to distribute to Kriti nearly \$700,000 in loan proceeds to pay Kriti's legal expenses from the 2005 Arbitration and to reimburse Kriti for capital contributions; (d) loading on substantial amounts of additional debt to Kriti affiliates, which in fact was disguised equity; (e) failing to make capital calls for this additional equity; (f) diverting ARP-II's funds to pay for Black's employment by Kriti Management; (g) diverting Bank of America loan proceeds to pay condominium development costs in violation of the Bank of America loan agreement; and (h) diverting ARP-II's funds and other property to projects undertaken by an entity, Archilite LLC, in which ARP-II has no interest.

36. Under Section 6.3 of the Operating Agreement, Kriti owed Emerald a fiduciary duty to discharge its duties consistently with the obligation of good faith and fair dealing. Specifically, the Operating Agreement provides that: "The Members shall discharge their duties and exercise any of their rights consistently with the obligation of good faith and fair dealing which they owe[] to [ARP-II] and the Members."

37. Kriti breached the aforesaid duty and Section 6.3 of the Operating Agreement by, among other things, (a) causing ARP-II to issue an unnecessary and improper Capital Call; (b) purporting to dilute the value of Emerald's interest in ARP-II on the basis of the unnecessary and improper Capital Call; (c) rejecting offers made by Centex and others to purchase ARP-II's interest in the Ripley Light Project at a time when those interests were worth more than \$15 million; (d) causing ARP-II to take on more than \$12.5 million in new debt – more than \$7 million of which actually were mischaracterized capital contributions – so that the present value of ARP-II's interest in the Ripley Light Project is less than its debt; (e) causing ARP-II to distribute to Kriti nearly \$700,000 in loan proceeds to pay Kriti's legal expenses from the 2005 Arbitration and to reimburse Kriti for capital contributions; (f) diverting ARP-II's funds to pay for Black's employment by Kriti Management; (g) diverting Bank of America loan proceeds to pay condominium development costs in violation of the Bank of America loan agreement; (h) loading on substantial amounts of additional debt to Kriti affiliates, which in fact was disguised equity; (i) failing to make capital calls for this additional equity; (j) diverting ARP-II's funds and other property to projects undertaken by an entity, Archilite LLC, in which ARP-II has no interest; and (k) refusing to provide Emerald access to ARP-II's books and records and other material information.

38. Under Section 8.1 of the Operating Agreement, "[d]istributions shall be made to the Members in proportion to their unreturned Capital Contributions."

39. Kriti breached Section 8.1 of the Operating Agreement by causing ARP-II to distribute approximately \$700,000 to Kriti to pay Kriti's legal expenses from the 2005 Arbitration and to reimburse Kriti for its capital contributions without distributing any amount, let alone a proportional amount, to Emerald.

40. Under Section 8.2 of the Operating Agreement, "no distribution to any member may be made if after giving effect to the distribution . . . the Company would not be able to pay its debts as they become due in the ordinary course of business."

41. Kriti breached Section 8.2 of the Operating Agreement by causing ARP-II to distribute approximately \$700,000 to Kriti to pay Kriti's legal expenses from the 2005 Arbitration and to reimburse Kriti for its capital contributions even though ARP-II did not have sufficient operating income to satisfy its interest obligations under the Bank of America loan.

42. Under Section 12.1 of the Operating Agreement, Emerald has a right to inspect ARP-II's books and records. Specifically, Section 12.1(a) of the Operating Agreement provides that: "[ARP-II] shall provide Members and their agents, accountants and attorneys access to its records, if any, at [ARP-II's] principal office The right of access provides the opportunity to inspect, download and copy records during ordinary business hours." Section 12.1(b) of the Operating Agreement provides that:

[ARP-II] shall furnish to a Member . . . : (1) Without demand, information concerning [ARP-II'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 [South Carolina Uniform Limited Liability Company Act of 1996]; and (2) On demand, other information concerning [ARP-II's] business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

43. Kriti breached Section 12.1 of the Operating Agreement by, among other things: (a) refusing to provide Emerald access to ARP-II's books and records pursuant to Emerald's rights under Section 12.1(a); (b) failing to provide Emerald with information concerning ARP-II's business or affairs as required under Section 12.2(a); and (c) failing to provide information that Emerald demanded pursuant to its rights under Section 12.2(b).

44. As a result of the aforesaid breaches, Emerald is entitled to the relief sought as set forth below.

Count II – Breach of Fiduciary Duty

45. Emerald repeats and realleges the allegations in paragraphs 1 through 44 with the same force and effect as if set forth in full herein.

46. As managing member of ARP-II, Kriti owed Emerald and ARP-II fiduciary duties of loyalty and care, including but not limited to those set forth in Sections 6.1(a), 6.2, and 6.3 of the Operating Agreement.

47. Kriti breached its fiduciary duties by, among other things, (a) causing ARP-II to issue an unnecessary and improper Capital Call; (b) purporting to dilute the value of Emerald's interest in ARP-II on the basis of the unnecessary and improper Capital Call; (c) rejecting offers made by Centex and others to purchase ARP-II's interest in the Ripley Light Project at a time when those interests were worth more than \$15 million; (d) causing ARP-II to take on more than \$12.5 million in new debt – more than \$7 million of which actually were mischaracterized capital contributions – so that the present value of ARP-II's interest in the Ripley Light Project is less than its debt; (e) causing ARP-II to distribute to Kriti nearly \$700,000 in loan proceeds to pay Kriti's legal expenses from the 2005 Arbitration and to reimburse Kriti for capital contributions; (f) loading on substantial amounts of additional debt to Kriti affiliates, which in fact was disguised equity; (g) failing to make capital calls for this additional equity; (h) diverting ARP-II's funds to pay for Black's employment by Kriti Management; (i) diverting Bank of America loan proceeds to pay condominium development costs in violation of the Bank of America loan agreement; (j) diverting ARP-II's funds and other property to projects undertaken by an entity, Archilite LLC, in which ARP-II has no interest; and

(k) refusing to provide Emerald access to ARP-II's books and records and other material information.

48. As a result of Kriti's breaches of its fiduciary duties, Emerald and ARP-II have suffered damages in an amount to be determined at the hearing, but not less than \$10 million.

Count III – Waste

49. Emerald repeats and realleges the allegations in paragraphs 1 through 48 with the same force and effect as if set forth in full herein.

50. Section 6.2 of the Operating Agreement states that Kriti, in the operation of managing ARP-II's affairs, owes Emerald and ARP-II a duty of care in the use of ARP-II's property, profits or derived benefits. Specifically, Section 6.2 provides that Kriti must "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."

51. Further, according to Section 6.3 of the Operating Agreement, Kriti is specifically obliged to discharge this duty of care with good faith and fair dealing. This obligation requires Kriti to refrain from engaging in transactions that result in a waste of ARP-II's valuable assets. Kriti breached its obligation and duty with acts that served no corporate purpose and were so one-sided that no businessperson of ordinary sound judgment could conclude that ARP-II received adequate consideration.

52. In violation of its contractual, statutory, and common law duties, Kriti failed to maximize the value of ARP-II assets and/or caused the transfer of valuable assets for far less than their value, and in many cases, for no value at all. Among other things, Kriti (a) rejected offers made by Centex and others to purchase ARP-II's interest in the Ripley Light

Project at a time when those interests were worth more than \$15 million; (b) caused ARP-II to take on more than \$12.5 million in new debt – more than \$7 million of which actually were mischaracterized capital contributions – so that the present value of ARP-II's interest in the Ripley Light Project is less than its debt; (c) caused ARP-II to distribute to Kriti nearly \$700,000 in loan proceeds to pay Kriti's legal expenses from the 2005 Arbitration and to reimburse Kriti for capital contributions; (d) loaded on substantial amounts of additional debt to Kriti affiliates, which in fact was disguised equity; (e) failed to make capital calls for this additional equity; (f) diverted ARP-II's funds to pay for Black's employment by Kriti Management; (g) diverted Bank of America loan proceeds to pay condominium development costs in violation of the Bank of America loan agreement; and (h) diverted ARP-II's funds and other property to projects undertaken by an entity, Archilite LLC, in which ARP-II has no interest.

53. As a result, Kriti's waste of ARP-II's valuable assets has harmed and damaged Emerald and ARP-II in an amount to be determined at the hearing, but not less than \$10 million.

Count IV – Dissociation

54. Emerald repeats and realleges the allegations in paragraphs 1 through 53 with the same force and effect as if set forth in full herein.

55. Under Section 10.5(b) of the Operating Agreement, a member may be expelled from membership in ARP-II for wrongful dissociation in the event that member: "(i) [e]ngaged in wrongful conduct that adversely and materially affected [ARP-II's] business; (ii) [w]illfully or persistently committed a material breach of [the Operating Agreement] or of a duty owed to [ARP-II] or [Emerald] under Section 33-44-409 of the [South Carolina Uniform Limited

Liability Company Act of 1996]; or (iii) [e]ngaged in conduct relating to [ARP-II's] business that makes it not reasonably practicable to carry on the business with the member."

56. Emerald is entitled to an order expelling Kriti from membership in ARP-II under Section 10.5(b) because Kriti has, among other things, (a) caused ARP-II to issue an unnecessary and improper Capital Call; (b) purported to dilute the value of Emerald's interest in ARP-II on the basis of the unnecessary and improper Capital Call; (c) rejected offers made by Centex and others to purchase ARP-II's interest in the Ripley Light Project at a time when those interests were worth more than \$15 million; (d) caused ARP-II to take on more than \$12.5 million in new debt – more than \$7 million of which actually were mischaracterized capital contributions – so that the present value of ARP-II's interest in the Ripley Light Project is less than its debt; (e) caused ARP-II to distribute to Kriti nearly \$700,000 in loan proceeds to pay Kriti's legal expenses from the 2005 Arbitration and to reimburse Kriti for capital contributions; (f) loaded on substantial amounts of additional debt to Kriti affiliates, which in fact was disguised equity; (g) failed to make capital calls for this additional equity; (h) diverted ARP-II's funds to pay for Black's employment by Kriti Management; (i) diverted Bank of America loan proceeds to pay condominium development costs in violation of the Bank of America loan agreement; (j) diverted ARP-II's funds and other property to projects undertaken by an entity, Archilite LLC, in which ARP-II has no interest; and (k) refused to provide Emerald access to ARP-II's books and records and other material information.

Count V – Declaratory Judgment

57. Emerald repeats and realleges the allegations in paragraphs 1 through 56 with the same force and effect as if set forth in full herein.

58. Under the terms of the Operating Agreement, Emerald owns a 70% membership interest in ARP-II.

59. On February 28, 2005, Kriti caused ARP-II to make a Capital Call, which was unnecessary and made in bad faith because, among other things, (a) a principal component of the capital call budget – the construction of a bulkhead – was wasteful and in breach of Kriti's duties to ARP-II and Emerald and also not necessary, prudent or reasonable, certainly not in the form proposed by Kriti, if at all; (b) there were additional sources of funding that would have been sufficient to satisfy ARP-II's purported capital needs, which Kriti refused to utilize; (c) potential buyers had emerged offering to buy the Ripley Light Project, such as Centex and PMG, which would have obviated the need to perform the work called for in the capital call budget; (d) ARP-II did not need the requested capital and the time the call was made; (e) Kriti imposed unreasonable and impermissible conditions on Emerald's satisfaction of the Capital Call; and (f) Kriti manipulated customers of Ripley Light Development in order to interfere with ARP-II's ability to obtain bank financing, as well to interfere with Emerald's ability to satisfy the Capital Call.

60. Even if the Capital Call were necessary and made in good faith, Kriti is not entitled to dilute Emerald's membership interest in ARP-II because Kriti did not make a Default Contribution on March 30, 2005 – the time at which Emerald's contribution was required – as required under Section 3(d)(iv) of the Operating Agreement. Accordingly, Emerald continues to own a 70% membership interest in ARP-II.

61. In addition to Kriti's failed attempt to dilute Emerald through the Capital Call, Kriti has caused ARP-II to execute promissory notes with Williams, Kriti's principal; KHI, the guarantor on ARP-II's Bank of America loan; and Navarino Oil, an affiliate of Kriti. The

aggregate amount of principal and accrued interest outstanding on the notes exceeds \$7.4 million.

62. Each of the Williams, KHI and Navarino Oil notes are actually disguised equity, as shown by the fact that they are unsecured, have no fixed maturity date, no regular interest payments, and are designed to apply any payments on the notes – of which there have been none – to pay down principal first. Moreover, the notes do not provide lump sum financing to ARP-II, but rather, for example in the case of KHI, reflect infusions of cash which had already been made on an as-needed basis, which then are reflected in an after-the-fact amendment to the notes.

63. As a consequence, the Williams, KHI and Navarino Oil notes do not constitute debt owed by ARP-II, but should be recharacterized to reflect equity contributions advanced by Kriti to ARP-II.

64. In addition, such equity or capital was improper because under the Operating Agreement all capital must be raised through capital calls and none were made for any of this additional equity or capital.

65. Further, this equity, in addition to being improper, was unnecessary and improper because it was used for expenses that were incurred in breach of the Operating Agreement, in breach of the fiduciary duties owed by Kriti to ARP-II and to Emerald and constitute waste.

Count VI – Damages on Behalf of ARP-II

66. Emerald repeats and realleges the allegations in paragraphs 1 through 65 with the same force and effect as if set forth in full herein.

67. The expenses incurred by Kriti on behalf of ARP-II were in breach of the fiduciary duties owed by Kriti to ARP-II and constitute waste.

68. As a result, ARP-II has been damaged in an amount of at least the recharacterized equity from Kriti and its affiliates.

RELIEF SOUGHT

Based upon the foregoing, Emerald seeks:

- (a) an order declaring that Emerald owns 70% of the Membership Shares of ARP-II;
- (b) an order declaring that the amounts contributed pursuant to the Williams, KHI and Navarino Oil notes are equity contributions and do not constitute debt owed by ARP-II;
- (c) an order that the aforesaid equity was improper and unnecessary and thus should not be treated as equity for purposes of diluting Emerald's interests in ARP-II;
- (d) an order expelling Kriti from membership in ARP-II pursuant to Article 10 of the Operating Agreement;
- (e) in the event an order of expulsion is not granted, a permanent injunction prohibiting Kriti from violating any provision of the Operating Agreement;
- (f) damages to ARP-II in an amount to be determined at the hearing, but not less than \$10 million, for the diminution in ARP-II's value directly resulting from Kriti's breaches of the Operating Agreement, waste, and other misconduct;
- (g) damages to Emerald in an amount to be determined at the hearing, but not less than \$10 million, for the diminution in ARP-II's value directly resulting from Kriti's breaches of the Operating Agreement, waste, and other misconduct;
- (h) the costs of this arbitration, including arbitrators' fees and reasonable attorneys fees and disbursements, as set forth in Section 12.18 of the Operating Agreement; and

(i) such other and further relief as the Panel deems just and proper.

Dated: July __, 2010

SCHULTE ROTH & ZABEL LLP

By: _____
Robert J. Ward
919 Third Avenue
New York, New York 10022
(212) 756-2000

*Attorneys for Claimant
Emerald Investments, LLC*

EXHIBIT J

AMERICAN ARBITRATION ASSOCIATION
 COMMERCIAL ARBITRATION RULES
 NEW YORK CITY

-----X
 EMERALD INVESTMENTS, LLC,

Claimant,

-against-

KRITI RIPLEY, LLC,

Respondent.
 -----X

CASE NO. 13 115 00216 10

**RESPONDENT'S ANSWER TO
 SECOND AMENDED CLAIM AND
 COUNTERCLAIMS**

Respondent, KRITI RIPLEY, LLC ("KRITI"), by its attorneys Rand Rosenzweig Radley & Gordon LLP, hereby submits its Answer to the Second Amended Demand for Arbitration ("Demand") filed by claimant, Emerald Investments, LLC ("Emerald"), and, as detailed below, denies all of Emerald's claims and asserts counterclaims against Emerald.

BACKGROUND INFORMATION

1. Kriti is a Delaware limited liability company which was formed in December 2003, for the specific purpose of becoming a member of, and investing money in, Ashley River Properties II, LLC ("ARP-II"). ARP-II is a South Carolina limited liability company, engaged in the Ripley Light Yacht Club project (the "Project"), involving the development of several waterfront properties into residential condominiums with marina facilities and other amenities in Charleston, South Carolina. Although the marina is built and operating, ARP-II has yet to build the contemplated residential condominiums.

2. Emerald is a Connecticut limited liability company and the other member of ARP-II. Stuart Longman ("Longman") is the owner and principal of Emerald.

The ARP-II Operating Agreement

3. On December 29, 2003, Emerald and Kriti, as members, entered into an Operating Agreement with and pertaining to ARP-II (the "Operating Agreement"; attached as Exhibit A, omitting all exhibits to the Operating Agreement except for its Exhibit A).

4. Pursuant to §3.7(a) of the Operating Agreement, Kriti contributed \$1,250,000 for a 30% membership interest in ARP-II. To induce Kriti to make its investment, Emerald and Longman made representations and warranties in §3.9 of the Operating Agreement.

5. Also pursuant to the Operating Agreement, ARP-II and Ripley Light Development, LLC ("RLD"), a Longman affiliate, entered into a Development and Management Agreement, dated December 30, 2003, appointing RLD as manager of the Project (the "Management Agreement").

6. Section 5.2(g) of the Operating Agreement prohibits payments other than as set forth in the marina budget, and §5.2(p) of the Operating Agreement prohibits distributions to members without the approval of both Kriti and Emerald. Section 5.7 of the Operating Agreement specifies the handling of ARP-II's bank accounts, and provides that the "funds of the Company shall not be commingled with the funds of any other party."

7. Section 13.01 of the Operating Agreement defines an "Emerald Member Default" as a breach (i) by Emerald or Longman of any representation or warranty under the Operating Agreement or (ii) by RLD of the Management Agreement.

The Prior Disputes

8. On December 30 and 31, 2003, Kriti made the contribution required under §3.7(a) of the Operating Agreement, by wiring \$1,155,000 to ARP-II's bank account at Union Savings Bank and \$95,000 to Richard Brownyard, Esq. for closing expenses. Notwithstanding the unambiguous prohibitions contained in the Operating Agreement, Longman and Emerald caused Kriti's investment of \$1,155,000 in ARP-II, to be diverted on that same day to Emerald, then to Sapphire Development LLC ("Sapphire"), Longman's affiliate then in bankruptcy, and finally to Longman's wife.

9. On June 29, 2004, ARP-II entered into the Construction Loan Agreement with Marshall Investment Corporation ("Marshall") for up to \$5 million. On two separate occasions, proceeds of construction loan draw-downs totaling over \$400,000 were transferred to Longman's wife Gayla, instead of being used for the Project.

10. Prior to the assignment of the property and assets to ARP-II, Longman, through one of his affiliates, had entered into agreements with three buyers for condominium units in the Project (the "Buyer Contracts"). In the aggregate, Longman's affiliate received the sum of \$885,000 in contract deposits. The land parcels subject to the Buyer Contracts were property conveyed by Respondents' affiliates to ARP-II. The buyers demanded money they paid under the Buyer Contracts with interest, and at various times in 2005, commenced two suits against ARP-II, filing notices of pendency against ARP-II's property.

11. Emerald and Longman failed to disclose the Buyer Contracts in the schedules to the Operating Agreement or elsewhere. Accordingly, their representations in §3.9(f) of the

Operating Agreement, that no other agreements existed relating to the property conveyed, were false.

12. In §3.9(a) of the Operating Agreement, Emerald represented, among other things, that there were no proceedings affecting the “Company Opportunity Parcels,” defined in §6.1 of the Operating Agreement to include over 6 acres of land known as the “Collins Property.” Emerald’s affiliate, Sapphire, had assigned to ARP-II its rights to a purchase agreement for the Collins Property, subject only to pending litigation. Unbeknownst to Kriti, Sapphire had filed for bankruptcy protection in August 2003, just four months before Emerald and Longman made the false representations.

13. For at least eight months, Longman, for himself, and through his bookkeeper and accountant, sought to keep Kriti from learning about the diversion of over \$1 million of ARP-II’s funds. For example, Kriti was provided with false bank ledgers and balance sheets. Kriti’s requests, beginning in January 2004, for information and copies of ARP-II’s bank statements were routinely ignored. Respondents’ fraud was so extensive that even ARP-II’s 2003 tax return reflected cash of \$1,155,000, when there was none.

14. After being caught out in August 2004, Longman admitted to the diversion of the funds, and over time, repaid some, but not all of the funds diverted.

First Arbitration Award Found Emerald Breached the Operating Agreement

15. Kriti and ARP-II initiated a demand with the American Arbitration Association against Emerald and Longman, on or about March 23, 2005, seeking a declaration that there was an Emerald Member Default (as defined in §13.01 of the Operating Agreement) and, accordingly

that they were entitled to the remedies set forth in §13.02 of the Operating Agreement (the “First Arbitration”).

16. Hearings for the First Arbitration were held in August and September, 2005 and the arbitrators rendered their award on October 31, 2005 (the “First Award”; attached as Exhibit B). The arbitrators found that Emerald and Longman’s conduct constituted an Emerald Member Default by, among other things:

- a. “wrongfully making payments to or for the benefit of Longman or other entities Longman controlled, which were totally unrelated to ARP-II;”
- b. wrongfully commingling funds in the ARP-II account with non-ARP-II accounts “including an account, in part, in the name of Longman’s wife” in contravention to the express language of the Operating Agreement;
- c. failing to disclose that Sapphire “had filed a petition in bankruptcy before the execution of the Operating Agreement;”
- d. failing to make full disclosure of “third-party contracts for the purchase of units and marina slips” in excess of \$800,000 (*i.e.*, the Buyer Contracts).

17. As a result of its finding of Emerald Member Defaults, the arbitrators determined that Kriti and ARP-II are entitled, and validly exercised their remedies under §13.02 of the Operating Agreement, to (i) consider Emerald’s voting rights forfeited; (ii) validly terminate the Management Agreement; and (iii) “purchase the Membership Shares of the Emerald Member at a cost equal solely to the Emerald Member’s unreturned Capital Contribution...” (Exhibit B at p. 2). Further, the arbitrators awarded Kriti and ARP-II the amount of \$400,000 as indemnification for claims by the “third party contract vendees.” (Exhibit B at p. 3, ¶ F). Finally, Kriti and ARP-II, as the prevailing parties, were awarded \$251,000 for legal fees and

disbursements and \$55,225 as reimbursement of the AAA administrative fees. (Exhibit B at p. 3, ¶ G, p. 4 no. 9).

18. On December 9, 2005, the arbitrators clarified the First Award, but did not change its substantive provisions. (Clarification of First Award, attached as Exhibit C).

Second Arbitration Award

19. During the hearings in the First Arbitration, it became apparent that, while Emerald and Longman's diversion of funds from ARP-II was blatant and uncontroverted, an accounting for the amount that they subsequently repaid would substantially delay the arbitration proceeding (which was subject to a 120-day limitation). (Exhibit A at §12.18). Accordingly, the parties to the First Arbitration stipulated to severance of the claims for amounts due to/from ARP-II and Emerald/Longman, and agreed that these claims could be submitted in a new arbitration.

20. On or about November 23, 2005, Kriti and ARP-II commenced a second arbitration for the severed portion of the prior arbitration proceeding by filing another Demand for Arbitration and Statement of Claim against Emerald and Longman in accordance with the Commercial Arbitration Rules of the AAA (the "Second Arbitration"). Hearings in the Second Arbitration were held in May 2006, and the arbitrator rendered an award on June 22, 2006 ("Second Award"; attached as Exhibit D). The arbitrator found that Kriti and ARP-II were entitled to recover from Emerald and Longman the amount of \$143,340.00 plus interest from November 1, 2005, until payment in full. (Exhibit D at ¶1).

21. Additionally, the arbitrator ruled that Emerald and Longman must pay Kriti and ARP-II, as the prevailing parties, \$133,653.14 for attorney and expert costs and expenses, plus

interest from the date of the Award in accordance with the South Carolina statutory rate and to reimburse Kriti for payments made to the AAA. (Exhibit D at ¶8).

22. On or about July 5, 2006, Emerald and Longman moved for modification of the Second Award purportedly in accordance with Rule 46 of the Commercial Arbitration Rules of the AAA. On July 28, 2006, the arbitrator denied the request for modification. (Denial, attached as Exhibit E).

Confirmation of the Awards

23. On November 9, 2005, just days after the First Award was rendered and well before the modification, Emerald and Longman filed a complaint, petition and application to modify or vacate the First Award and for declaratory relief in Charleston, South Carolina. Kriti and ARP-II later moved to dismiss the action on the grounds that, among other things, the South Carolina court did not have subject matter jurisdiction to entertain a motion to vacate or otherwise address the First Award because: (i) the arbitration proceedings were conducted in the State of New York, and (ii) the parties agreed that the courts of the State of New York shall have sole and exclusive jurisdiction over any dispute among the parties.

24. In the meantime, Kriti and ARP-II filed their petitions to confirm the First Award and the Second Award in the New York Supreme Court, New York County. After consolidating the two petitions, on February 15, 2008, the Supreme Court, by Justice Ira Gammerman, issued its Decision and Order confirming both arbitration awards. (Confirmation of Awards, attached as Exhibit F). The Decision and Order left for a related proceeding entitled *Emerald Investments, LLC. v. Kriti Ripley, LLC* (N.Y. Co. Index No. 111957/06), the issue of whether Kriti had properly sought to effect its buyout rights under §13.02(c) of the Operating Agreement

(the “Buyout Action”). Significantly, the Buyout Action related only to Kriti’s February 2006 exercise of its option to purchase Emerald’s Membership Interest in ARP-II. It raised no issue with respect to the capital call or the resulting dilution of Emerald’s interest.

25. Thereafter, on March 27, 2008, the Clerk of the Supreme Court, New York County, entered a judgment against Emerald and Longman (the “Judgment”; attached as Exhibit G) confirming “in all respects” the First Award and the Second Award. With respect to the First Award, the Judgment adjudged and decreed specifically, *inter alia*, that:

- a. Kriti and ARP-II recover of Emerald and Longman, jointly and severally, the sum of \$706,225 with interest from October 31, 2005 until the date of Judgment in the amount of \$144,751.94;
- b. That as of January 14, 2005, Emerald forfeited all voting rights in ARP-II;
- c. That as of January 14, 2005, Kriti and ARP-II validly terminated the Project Development Agreement without penalty or premium; and
- d. That Kriti has the right to purchase the Emerald Member share for \$2,500,000 minus offsets totaling \$706,225 by a closing pursuant to the terms of Section 13.02 of the Operating Agreement. (*Id.*)

With respect to the Second Award, the Judgment adjudged and decreed specifically, *inter alia*, that:

- e. Kriti and ARP-II recover of Emerald and Longman, jointly and severally, the sum of \$143,340.00 with interest from November 1, 2005 until the date of Judgment in the amount of \$29,345.43 calculated as the South Carolina statutory rate of 8.75%;
- f. Kriti and ARP-II recover of Emerald and Longman, jointly and severally, the sum of \$133,653.14 with interest from June 22, 2006 until the date of Judgment in the amount of \$19,896.92 calculated as the South Carolina statutory rate of 8.75%;
- g. Kriti and ARP-II recover of Emerald and Longman, jointly and severally, the sum of \$5,631.00 with interest from June 22, 2006 until the date of Judgment in the amount of \$838.29 calculated as the South Carolina statutory rate of 8.75%;
- h. Kriti and ARP-II shall pay or negotiate settlement of the unpaid balance of payables assumed by APR-II upon entering the Operating Agreement in an amount not to exceed \$126,897.43, which obligation, however, may not be

offset against the amounts due from Emerald and Longman to Kriti and ARP-II. (*Id.*)

26. The total amount of the Judgment was \$1,184,581.72, with interest accruing from March 27, 2008 at the post-judgment statutory rate of 9%. (*Id.*)

Kriti's Right To Buyout of Emerald's Interest

27. The First Arbitration Award determined that Kriti has the right to purchase the Emerald Member share for \$2,500,000 minus offsets totaling \$706,225 by a closing pursuant to the terms of §13.02 of the Operating Agreement. Kriti initially sought specific performance compelling Emerald to deliver its Membership Interest in ARP-II in accordance with the First Award. (Answer and Counterclaim in Buyout Action, attached as Exhibit H). However, in May 2009, while both parties' summary judgment motions in the Buyout Action were pending, Kriti withdrew its claim for specific performance of its right to purchase Emerald's interest in ARP-II because, among other things, plummeting real estate values in Charleston, South Carolina, together with the difficulty of obtaining construction financing to complete the project, had drastically reduced, if not eliminated the value of ARP-II and its property. Accordingly, the Court, in the Buyout Action, entered an order terminating Kriti's rights of buyout under the First Award. (Order, attached as Exhibit I).

Judgment Enforcement in South Carolina and Elsewhere

28. On April 29, 2008, the Judgment was duly filed and indexed in the judgment rolls of the Charleston County Clerk of Court. Notice of filing the Judgment was served upon the Connecticut Secretary of State as Emerald's statutory agent of service of process.

29. Due to Emerald and Longman's failure to pay the monies owed under the Judgment, Kriti and ARP-II successfully applied in South Carolina for a charging order.

Pursuant to this application, the South Carolina Court of Common Pleas entered an order on October 17, 2008 directing that Emerald's distributional interest in ARP-II is charged to satisfy the Judgment against it in the amount of \$1,184,581.72 as of March 27, 2008 with interest accruing after that date at the post-judgment statutory rate. (Charging order, attached as Exhibit J).

30. On February 6, 2009, the South Carolina court entered an order, *inter alia*, continuing in full force and effect the charging order against Emerald's distributional interest in ARP-II, which will constitute a lien on said distributional interest. (Second order, attached as Exhibit K).

31. On March 6, 2009, the South Carolina court denied Emerald and Longman's motion to alter or amend the February 6, 2009 charging order. Thus, it remains in full force and effect to date. (Denial, attached as Exhibit L). Emerald has appealed the denial of its motion. (Appeal, attached as Exhibit M).

32. Emerald and its affiliate have commenced numerous other actions in South Carolina to hinder, frustrate, harass and delay Kriti and ARP-II. To date, no amount has been paid by either Emerald or Longman in satisfaction or partial satisfaction of the Judgment.

DENIALS

33. Emerald's claims are a frivolous and baseless fabrication, wholly without merit and apparently asserted only to raise spurious issues in an attempt to hinder and delay Kriti's rights to foreclose against Emerald's interest in ARP-II. Kriti denies each and every factual allegation raised by Emerald as a ground for its demands, specifically:

- a. ARP-II Capital Call Was A Legitimate Business Decision. The issue of the \$2 million capital call was a pivotal issue in the First Arbitration. (See Exhibit B at ¶B.4). In the arbitration, Emerald argued that the capital call, and the resulting dilution of its interest, was a “squeeze down.” Although the arbitrators determined that Kriti’s capital call was implemented in such a way that it gave Emerald “probable cause” to contest Kriti’s actions and thereby avoid forfeiture of Emerald’s interest pursuant to the last paragraph of §13.02 of the Operating Agreement, it did not reverse the capital call and denied Emerald any relief from its effects. In its papers submitted to J.H.O. Gammerman on the confirmation motion, Emerald repeated its complaint against the capital call and the resulting dilution. Contrary to Emerald’s position then and now, Judge Gammerman found: “the arbitrators did not expressly find that Kriti acted in bad faith and oppressively toward respondents regarding the capital call.” (Exhibit F, at 25)

- b. ARP-II Purchase Offers Legitimately Rejected. The Centex “offer” was a tentative showing of interest, made before the First Award and considered in the First Arbitration. Centex offer did not proceed to a sale in large part because Emerald refused to agree to a sale where the proceeds were to be placed in escrow for subsequent determination by appraisers and arbitrators. Emerald’s claims concerning Centex were considered and rejected in the First Arbitration. No subsequent offer was more than a preliminary showing of interest by a buyer or buyers of dubious or unproven qualifications, and any such offer was rejected by Kriti for objective business reasons. Moreover, until November 2007, ARP-II would not have been able to convey good title to the marina. In all events, even if

Kriti, together with other real estate developers, did not anticipate the collapse in real estate prices and the evaporation of available lending sources experienced in what is being called the "Great Recession," such failure does not constitute wrongdoing or waste.

c. ARP-II Debt. Any debt taken on by ARP-II was legitimate and for the sole purpose of and benefit to ARP-II and the Project. As of March 31, 2010, ARP-II owed:

- i. Kriti Holdings, Inc ("KHI") - \$2,805,000;
- ii. Navarino Oil, - \$4,000,000; and
- iii. Davidson Williams, a member of Kriti, - \$25,000, exclusive of accrued interest.

KHI also guaranteed Bank of America's loan of \$5,300,000 to ARP-II. These loans and guarantees are in addition to the \$2.0 million in additional capital that Emerald illegitimately contests. Significantly, Emerald does not claim or offer any evidence that the 10% rate of interest was higher than that available on an arms-length basis from unrelated lenders, especially as these loans were subordinated to Bank of America and allowed for accrual, rather than regular payment of interest.

d. There Is No Basis To Rewrite Debts to Third Parties. Although implicitly conceding that KHI, Navarino Oil and Williams paid money to ARP-II, which ARP-II recorded as debt and issued promissory notes, for the first time in the Demand, Emerald seeks to recast such debt as capital, and then ask the panel to disregard the capital. Moreover, Emerald's argument that the funds should have

been raised through a capital call is disingenuous and contradictory as Emerald has failed to pay the amount of the judgment owed to ARP-II and continues to claim that a capital call was improper. Emerald's wish to have it both ways should be rejected. There is no basis in fact or in law to recast the loans where the money was needed and used for the operations of ARP-II.

- e. ARP-II Funds Used Only for ARP-II Projects. Kriti did not divert ARP-II funds to its own projects unrelated to ARP-II. More specifically:
 - i. The two awards awarded ARP-II hundreds of thousands in damages for Emerald/Longman's misappropriation of ARP-II's funds and for undisclosed liabilities, in return for which ARP-II became responsible to pay third party vendees. The awards also awarded ARP-II hundreds of thousands in litigation fees and disbursements, incurred in both arbitrations. Payment of ARP-II's legal fees from the proceeds of the bank loan was proper.
 - ii. The payment of condominium development expenses was specifically contemplated and agreed by both Emerald and Kriti in connection with the Project, so the use of the funds for these purposes was absolutely a legitimate expense of ARP-II.
 - iii. The building of a marina building was desirable and necessary for the operations of a marina.
 - iv. Ryan Black continued to act as project manager for ARP-II, even when he moved to New York, and devoted substantial time to the dredging and other activities for ARP-II. It is true that Ryan Black provided certain

services to an affiliate of Kriti when he was on ARP-II's payroll, and provided certain services to ARP-II when he was on Kriti's affiliate's payroll. On the other hand, Williams has devoted substantial time to ARP-II over the last five years without pay or reimbursement by ARP-II for any of his services. Williams has over \$20,000 in expenses paid by Kriti's affiliate and not reimbursed by ARP-II.

- v. Kriti did not divert any of ARP-II's funds to Ryan Black or Archilite, LLC ("Archilite"), an entity unrelated to Kriti. Black, as an employee of ARP-II was paid compensation and reimbursed for his ordinary and necessary business expenses incurred for the benefit of ARP-II. ARP-II also reimbursed to Archilite for certain services and expenses it provided to, or incurred on behalf of, ARP-II. For example, ARP-II paid Archilite for the services of Ms. Jennifer Jeffries, Archilite's employee, to provide bookkeeping, clerical and other services to ARP-II. ARP-II later hired Ms. Jeffries as full-time marina manager.

- f. Emerald Given Complete Access to ARP-II Records. Emerald and Longman were given complete access to ARP-II's non-confidential and non-privileged books and records on several occasions both in New York and South Carolina. The evidence will show that Emerald and Longman declined to avail themselves of opportunities to review the books and records in person, and that they received copies of many of the records requested on numerous occasions. Kriti and ARP-II have not destroyed ARP-II books or records.

- g. ARP-II was required to dredge the Ripley canal and did so in a considered and proper manner. The cost of the dredging increased largely due to the fact that Emerald/Longman never obtained good title to the bottom of the canal over which the marina floated.
- h. Dilution of Emerald Interest in ARP-II Valid and Legal. By refusing to respond to the capital call, Emerald's interest in ARP-II was diluted in proportion to the capital financing supplied by Kriti and in strict accord with the Operating Agreement. Kriti complied with the provisions of the Operating Agreement and South Carolina law in diluting Emerald's interest. As a result of Emerald's failure to respond to the capital call, its interest in ARP-II was reduced to 21.3% and has been so reflected on the K-1 sent to ARP-II for 2005 and thereafter without timely objection.

FIRST AFFIRMATIVE DEFENSE

Emerald's claims concerning its loss of voting rights and project management rights, dilution of its Membership Interests, Centex, bulkhead construction, and the Marshall loan extension among other things, were presented to, considered by, and rejected in the First Arbitration and cannot be raised again here by reason of the doctrines of collateral estoppel and *res judicata*.

SECOND AFFIRMATIVE DEFENSE

Emerald's claims concerning its dilution of its Membership Interests and, the improper nature of the Capital Call are barred by operation of the S.C. Code §15-3-530(1) for failure to assert such claims within three years, as such claims arose, and Emerald was aware or should have been aware of each of such claim in 2005.

THIRD AFFIRMATIVE DEFENSE

Emerald's claims concerning the dilution of its Membership Interests and the improper nature of the Capital Call should be rejected on the grounds of estoppel.

COUNTERCLAIMS

1. By this arbitration, Emerald seeks, among other things, an "order [sic] expelling Kriti from membership in ARP-II." Such expulsion would leave Emerald as the sole member of ARP-II, entitled to manage its affairs. The First Award confirmed that Emerald "forfeited all voting rights in ARP-II." The forfeiture of Voting Rights in ARP-II is a remedy set forth in §13.02(a) of the Operating Agreement. Expulsion of Kriti as a member would effectively do the same thing as Emerald demanded in its first amended demand; namely, restoring Emerald's voting rights. Pursuant to the second paragraph of §13.02(c), should Emerald "not prevail" in its attempt to set aside the First Award and the loss of its voting rights in ARP-II, then Emerald should forfeit all of its Membership Shares in ARP-II.

2. Emerald has not paid the Judgment, which amount now approaches \$1.5million. Although ARP-II and Kriti have obtained a charging order against Emerald's interest in ARP-II, Emerald has argued in South Carolina courts, among other things, that no foreclosure is permitted because Emerald's interest in ARP-II is uncertain. Accordingly, Kriti seeks an Award confirming Emerald's Membership Interest in ARP-II as 21.3% and Kriti's interest as 78.7%, and that as of March 31, 2010, ARP-II's long term liabilities exceed \$12.5 million plus accrued interest (or such other amount as of the date closer to the date of the Award), as reflected on the books and records of ARP-II.

3. In the event that the arbitrators determine that Emerald has a different Membership Interest, and that the aforesaid long term liabilities are other than as reflected above and in the books and records of ARP-II, then Kriti seeks a clear statement in an Award fixing Emerald's Membership Interest and the amount of long term liabilities as between ARP-II and Kriti on the one hand, and Emerald, on the other hand, so that Emerald cannot continue to hinder and delay Kriti in foreclosing on Emerald's Membership Interest in ARP-II by claiming that such interest is not sufficiently defined to be sold.

4. Finally, Kriti seeks the recovery of its arbitration costs and expenses as provided under §12.18 of the Operating Agreement.

RELIEF SOUGHT

Accordingly, Kriti seeks an Award:

- a. Dismissing all of Emerald's claims;
- b. Determining, in accordance with the second paragraph of §13.02(c) of the Operating Agreement, that Emerald has forfeited all of its Membership Shares in ARP-II;
- c. Confirming, as between the parties hereto, Emerald's Membership Interest in ARP-II as 21.3% of the Membership Interests and the amount of long term liabilities as in excess of \$12.5 million as of March 31, 2010, or in the alternative specifying Emerald's Membership Interest and the amount of long term liabilities owed by ARP-II; and
- d. Awarding Kriti the costs and expenses (including reasonable attorneys' fees) incurred in this arbitration.

Dated: White Plains, New York
July 14, 2010

RAND ROSENZWEIG SMITH
RADLEY & GORDON LLP

A handwritten signature in black ink, appearing to be 'C. Rosenzweig', written over a horizontal line.

By: _____
Charles L. Rosenzweig, Esq.
Attorneys for Respondent
50 Main Street, 12th Floor
White Plains, New York 10606
(914)406-7000

EXHIBIT LIST

- Exhibit A – Operating Agreement
- Exhibit B – First Award, dated October 31, 2005
- Exhibit C – Clarification of First Award, dated Dec. 9, 2005
- Exhibit D – Second Arbitration Award, dated June 22, 2006
- Exhibit E – Denial of modification of Second Arbitration Award
- Exhibit F – Confirmation of Awards, dated February 15, 2008
- Exhibit G – New York Judgment, dated March 27, 2008
- Exhibit H – Answer and Counterclaim in Buyout Action
- Exhibit I – Order in Buyout Action
- Exhibit J – South Carolina Charging Order, dated October 17, 2008
- Exhibit K – South Carolina Second Charging Order, dated February 6, 2009
- Exhibit L – South Carolina denial, dated March 6, 2009
- Exhibit M – Emerald appeal of South Carolina denial

EXHIBIT LIST

- Exhibit A – Arbitration Award, dated October 28, 2010
- Exhibit B – Operating Agreement
- Exhibit C – First Award, dated October 31, 2005
- Exhibit D – Clarification of First Award, dated Dec. 9, 2005
- Exhibit E – Second Award, dated June 22, 2006
- Exhibit F – Denial, dated July 28, 2006
- Exhibit G – Confirmation of Awards, dated February 15, 2008
- Exhibit H – Prior Judgment, dated March 27, 2008
- Exhibit I – Second Amended Demand, dated July 2, 2010
- Exhibit J – Answer to Second Amended Demand, dated July 14, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IN THE MATTER OF THE ARBITRATION BETWEEN

KRITI RIPLEY, LLC

PETITIONER,

-against-

INDEX NO. 652851/2011
ECF CASE

(JUSTICE EILEEN BRANSTEN)

EMERALD INVESTMENTS, LLC

RESPONDENT.

STIPULATION

-----X

WHEREAS, on October 18, 2011, the Petitioner, Kriti Ripley, LLC ("Kriti"), by its attorneys Rand Rosenzweig Radley & Gordon, LLP, having filed its petition for confirmation of an award rendered pursuant to the Commercial Rules of the American Arbitration Association on October 28, 2010 (the "Award");

WHEREAS, Respondent, Emerald Investments, LLC ("Emerald"), by its attorneys Schulte Roth & Zabel LLP, having duly appeared and acknowledged service of the aforementioned petition and accompanying papers;

WHEREAS the petition in this proceeding is currently returnable on December 15, 2011 in Part 3 of this Court;

WHEREAS, the Award, among other things, directed that Kriti should reimburse Emerald the sum of \$59,527.74, for the share of the costs borne by Emerald chargeable to Kriti;

WHEREAS, on March 27, 2008, the Clerk of the Supreme Court, New York County, entered a judgment, based on two prior arbitrations, against Emerald and its principal, Stuart

Longman, and in favor of Kriti and Ashley River Properties II, LLC in the amount of \$1,184,581.72 ("Prior Judgment");

WHEREAS, the parties wish to apply the \$59,527.74 amount under the Award against the sum due from Emerald and another under the Prior Judgment; and

WHEREAS, the parties consent to an order and judgment of confirmation in the form annexed;

IT IS HEREBY STIPULATED AND AGREED by the undersigned attorneys for the parties hereto:

1. The parties hereby consent to the form of order and judgment annexed hereto as Exhibit A.

2. The attorneys for Kriti have executed and delivered to Emerald's attorneys a partial satisfaction piece of the judgment of the Prior Judgment substantially in the form of Exhibit B. Upon entry of the order and judgment in this proceeding, Emerald may file the partial satisfaction piece on the docket of the Prior Judgment.

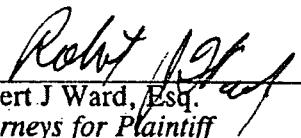
3. The attorneys for Emerald have executed and delivered to Kriti's attorneys a satisfaction piece of the judgment to be entered in this proceeding substantially in the form of Exhibit C. Upon entry of the order and judgment in this proceeding, Kriti's attorneys may date and complete the satisfaction piece and file it on the docket of the judgment arising from this proceeding.

4. The parties and their attorneys shall cooperate and promptly execute any and all documents reasonably requested to implement the intent of this stipulation and the annexed documents.

5. Any fully-executed counterpart of the present stipulation, including any with one or more photocopied or facsimile signatures, shall be useable as an original for all purposes.

Dated: New York, New York
December 9, 2011

SCHULTE ROTH & ZABEL LLP

By: 
Robert J. Ward, Esq.
Attorneys for Plaintiff
919 Third Avenue
New York, New York 10022
(212) 756-2000

RAND ROSENZWEIG RADLEY
& GORDON, LLP

By: 
Charles L. Rosenzweig, Esq.
Attorneys for Defendant
445 Hamilton Avenue, Suite 1201
White Plains, New York 10601
(914) 406-7000

EXHIBIT A

At IAS Part 3 of the Supreme Court of the
State of New York, held in and for the
County of New York, located at the
Courthouse at _____,
New York, New York on the ____ day of
_____ 2011.

Present: Hon. EILEEN BRANSTEN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

IN THE MATTER OF THE ARBITRATION BETWEEN

KRITI RIPLEY, LLC

INDEX No.

PETITIONER,

-against-

PROPOSED ORDER AND JUDGMENT
TO CONFIRM ARBITRATION AWARD

EMERALD INVESTMENTS, LLC

RESPONDENT.

-----X

The Petitioner, Kriti Ripley, LLC ("Kriti"), having applied for confirmation of the award rendered in an arbitration (the "Arbitration") conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association, signed and affirmed on October 28, 2010 ("Award"), a copy of which is attached hereto; and

WHEREAS, the parties, Kriti and respondent Emerald Investments, LLC ("Emerald") entered into an operating agreement on December 29, 2003 ("Operating Agreement"), as the two members of ARP-II, a South Carolina limited liability company owning, developing and managing waterfront real estate, including the operation of a marina, in Charleston, South Carolina.

WHEREAS, the Operating Agreement contains a broad arbitration provision providing for binding arbitration of any disputes among the parties before the American Arbitration Association in New York, New York, and for the exclusive jurisdiction of the courts of the State of New York, and exclusive venue in New York County;

WHEREAS, Emerald commenced the Arbitration demanding:

- (i) A declaration that Emerald is the rightful owner of 70% of the membership shares of ARP-II;
- (ii) A finding that the amounts contributed as loans by affiliates of Kriti to ARP-II should be treated as equity and not debt on the books of ARP-II;
- (iii) An order expelling Kriti from ARP-II;
- (iv) An injunction preventing Kriti from violating the Operating Agreement; and
- (v) Damages and costs of arbitration;

WHEREAS, Emerald further alleged in the Arbitration that Kriti had committed corporate waste and other acts of misconduct in its management of ARP-II since mid-2005 which justified a finding that Kriti had breached the Operating Agreement, Kriti should be disassociated from ARP-II, Kriti had forfeited its membership shares in ARP-II, and/or ARP-II should be dissolved;

WHEREAS, Kriti denied these allegations and counterclaimed that Emerald's actions were grounds for Emerald's forfeiture of its membership shares in ARP-II and/or its dissociation from ARP-II;

WHEREAS, Kriti demanded in the Arbitration (i) dismissal of the arbitration, (ii) forfeiture of Emerald's interests in ARP-II pursuant to South Carolina law, (iii) confirmation that

Emerald holds a 21.3% interest in ARP-II, (iv) a determination of the amount of long term liabilities on the books of ARP-II, and (v) costs and expenses of the arbitration;

WHEREAS, the arbitrators to the Arbitration rendered the Award finding that:

- a. "Kriti continues to the [sic] be the sole member with voting rights [in ARP-II] as determined in the initial arbitration and confirmed by J.H.O. Gammerman," and "may proceed with its business operations of ARP-II";
- b. Emerald owns a 70% membership interest and Kriti owns a 30% membership interest in ARP-II;
- c. The \$7,493,077.35 loaned to ARP-II "from the Kriti's affiliates and Davidson Williams should be treated as loans," and should not to be recast as equity;
- d. All Kriti's actions in managing ARP-II complained of by Emerald, were "well within reasonable business efforts to manage a complex piece of waterfront property," such that Kriti's decisions did not constitute (i) corporate waste, (ii) wrongful conduct adverse to ARP-II's business, (iii) a material breach of the Operating Agreement, or (iv) a material breach of a duty owed to ARP-II or Emerald;
- e. There is "no basis to dissociate Kriti or Emerald from [ARP-II] or to dissolve [ARP-II]";
- f. There was insufficient facts to authorize dissolution of ARP-II pursuant to Article 9.1 of the Operating Agreement; and
- g. There was insufficient facts to authorize dissociation or expulsion of a member of ARP-II pursuant to Article 10.5 of the Operating Agreement; and

WHEREAS, the Award awarded as follows:

- a. Emerald continues to own a 70% membership interest and Kriti continues to own a 30% membership interest in ARP-II;
- b. The loans by Kriti's affiliates to ARP-II shall be treated as loans and not recast as equity, and the amount of the loans are as set forth on the financial statement of ARP-II;
- c. Neither Kriti nor ARP-II committed corporate waste or engaged in any misconduct to support dissociation, dissolution, or an award to Emerald of damages; and any request for dissociation, dissolution or damages against Kriti is denied;
- d. Emerald did not commit sufficient acts to support a finding of dissociation; and any request for dissociation of Emerald is denied;

- e. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture;
- f. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request is denied;
- h. Each party shall bear its own costs and expenses incurred in connection with the Arbitration; and
- i. The administrative fees and expenses of the American Arbitration Association totaling \$18,800.00 and the compensation and expenses of the arbitrators totaling \$111,183.98 shall be borne equally by the parties, such that Kriti shall reimburse Emerald the sum of \$59,527.74.

NOW, upon reading and filing the Notice of Petition dated October 18, 2011, with proof of due service thereof, the Petition verified on October 14, 2011, all in support of the application; and the Stipulation executed by the attorneys for the parties dated, December 9, 2011 consenting to entry of this order and judgment confirming the Award, and due deliberation having been had,

THEREFORE, on the motion of Rand Rosenzweig Radley & Gordon LLP, attorneys for petitioner, it is hereby

ORDERED, ADJUDGED AND DECREED that the application to confirm the Award in all respects be and the same hereby is granted, without costs being assessed against any party.

Enter,

J.S.C.

Clerk of the Court

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

IN THE MATTER OF THE ARBITRATION BETWEEN

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

INDEX No. 650196/2006

PETITIONERS,

PARTIAL SATISFACTION OF
JUDGMENT

-AGAINST-

EMERALD INVESTMENTS, LLC
AND STUART LONGMAN,

RESPONDENTS.

-----X

WHEREAS, on March 27, 2008, a judgment was recovered by petitioners, Kriti Ripley, LLC and Ashley River Properties II, LLC against the respondents, Emerald Investments, LLC and Stuart Longman, in the above entitled proceeding for the sum of \$1,184,581.72 with interest accruing from March 27, 2008 at the post-judgment statutory rate of 9%, which judgment was on April 2, 2008, duly docketed and entered in the judgment book in the office of the Clerk of the County of New York at Book No.____ and Page No.____, and whereas on October 28, 2010, the sum of \$59,527.74 was paid on account of said judgment;

THEREFORE, partial satisfaction of said judgment is hereby acknowledged to the extent that the sum of \$1,184,581.72 plus interest accruing from March 27, 2008 at the post-judgment statutory rate of 9% is reduced by \$59,527.74 as of October 28, 2010, and that the Clerk of the County of New York is hereby authorized and directed to cancel, satisfy, and discharge the same to that extent.

Dated: November __, 2011

RAND ROSENZWEIG
RADLEY & GORDON LLP

By: _____
Charles L. Rosenzweig, Esq.
Attorneys for Petitioners
445 Hamilton Ave., Suite 1201
White Plains, New York 10601
(914) 406-7000

State of New York, County of Westchester ss.:

On _____, 2011 before me, the undersigned, personally came Charles L. Rosenzweig, personally known to me, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

IN THE MATTER OF THE ARBITRATION BETWEEN
KRITI RIPLEY, LLC

INDEX No. 652851/2011

PETITIONER,
-AGAINST-

SATISFACTION OF
JUDGMENT

EMERALD INVESTMENTS, LLC

RESPONDENT.

-----X

WHEREAS, on _____, a judgment was recovered by respondent, Emerald Investments, LLC ("Emerald") against the petitioner, Kriti Ripley, LLC, in the above entitled proceeding for the sum of \$59,527.74, which judgment was, on the _____ day of _____, duly docketed and entered in the judgment book in the office of the Clerk of the County of New York at Book No. ____ and Page No. ____, and whereas said judgment has been wholly paid;

THEREFORE, full satisfaction of said judgment is hereby acknowledged to the extent of the sum of \$59,527.74 owed to Emerald, and that the Clerk of the County of New York is hereby authorized and directed to cancel, satisfy, and discharge the same to that extent. All non-monetary parts of the judgment remain in full force and effect.

Dated: _____, 2011

SCHULTE ROTH & ZABEL LLP

By: _____

Robert J. Ward
Attorneys for Respondent
919 Third Ave.
New York, N.Y. 10022

State of New York, County of New York ss.:

On _____, 2011 before me, the undersigned, personally came Robert J. Ward, personally known to me, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY
PRESENT: Hon. Eileen Bransten, Justice **PART 3**

-----X
KRITI RIPLEY, LLC,

Petitioner,

-against-

EMERALD INVESTMENTS, LLC

Respondent.

Index No.: 652851/11
Motion Date: 12/15/11
Motion Seq. No.: 001

-----X
The following papers, numbered 1 to 3, was read on this motion to confirm an arbitration award.

Papers Numbered

Notice of Motion/Order to Show Cause - Affidavits - Exhibits

1

Answering Affidavits - Exhibits

Replying Affidavits

Cross-Motion: ☐ Yes ☒ No

As per the attached December 9, 2011 stipulation, Petitioner Kriti Ripley, LLC and Respondent Emerald Investments, LLC consent to confirm the arbitration award and consent to the form of order and judgment at Exhibit A to the December 9, 2011 stipulation, signed and attached hereto. Thus, the motion to confirm the arbitration award is dismissed.

Dated: December 16, 2011


Hon. Eileen Bransten

Check One: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE ☐ SETTLE/SUBMIT ORDER/JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE
FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IN THE MATTER OF THE ARBITRATION BETWEEN

KRITI RIPLEY, LLC

PETITIONER,

-against-

INDEX No. 652851/2011
ECF CASE

(JUSTICE EILEEN BRANSTEN)

EMERALD INVESTMENTS, LLC

RESPONDENT.
-----X

STIPULATION

WHEREAS, on October 18, 2011, the Petitioner, Kriti Ripley, LLC ("Kriti"), by its attorneys Rand Rosenzweig Radley & Gordon, LLP, having filed its petition for confirmation of an award rendered pursuant to the Commercial Rules of the American Arbitration Association on October 28, 2010 (the "Award");

WHEREAS, Respondent, Emerald Investments, LLC ("Emerald"), by its attorneys Schulte Roth & Zabel LLP, having duly appeared and acknowledged service of the aforementioned petition and accompanying papers;

WHEREAS the petition in this proceeding is currently returnable on December 15, 2011 in Part 3 of this Court;

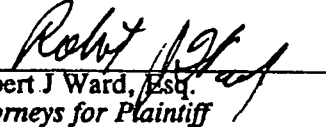
WHEREAS, the Award, among other things, directed that Kriti should reimburse Emerald the sum of \$59,527.74, for the share of the costs borne by Emerald chargeable to Kriti;

WHEREAS, on March 27, 2008, the Clerk of the Supreme Court, New York County, entered a judgment, based on two prior arbitrations, against Emerald and its principal, Stuart

5. Any fully-executed counterpart of the present stipulation, including any with one or more photocopied or facsimile signatures, shall be useable as an original for all purposes.

Dated: New York, New York
December 9, 2011

SCHULTE ROTH & ZABEL LLP

By: 

Robert J. Ward, Esq.
Attorneys for Plaintiff
919 Third Avenue
New York, New York 10022
(212) 756-2000

RAND ROSENZWEIG RADLEY
& GORDON, LLP

By: 

Charles L. Rosenzweig, Esq.
Attorneys for Defendant
445 Hamilton Avenue, Suite 1201
White Plains, New York 10601
(914) 406-7000

Longman, and in favor of Kriti and Ashley River Properties II, LLC in the amount of \$1,184,581.72 ("Prior Judgment");

WHEREAS, the parties wish to apply the \$59,527.74 amount under the Award against the sum due from Emerald and another under the Prior Judgment; and

WHEREAS, the parties consent to an order and judgment of confirmation in the form annexed;

IT IS HEREBY STIPULATED AND AGREED by the undersigned attorneys for the parties hereto:

1. The parties hereby consent to the form of order and judgment annexed hereto as Exhibit A.

2. The attorneys for Kriti have executed and delivered to Emerald's attorneys a partial satisfaction piece of the judgment of the Prior Judgment substantially in the form of Exhibit B. Upon entry of the order and judgment in this proceeding, Emerald may file the partial satisfaction piece on the docket of the Prior Judgment.

3. The attorneys for Emerald have executed and delivered to Kriti's attorneys a satisfaction piece of the judgment to be entered in this proceeding substantially in the form of Exhibit C. Upon entry of the order and judgment in this proceeding, Kriti's attorneys may date and complete the satisfaction piece and file it on the docket of the judgment arising from this proceeding.

4. The parties and their attorneys shall cooperate and promptly execute any and all documents reasonably requested to implement the intent of this stipulation and the annexed documents.

At IAS Part 3 of the Supreme Court of the
State of New York, held in and for the
County of New York, located at the
Courthouse at 60 Centre St.
New York, New York on the 16 day of
December 2011.

Present: Hon. EILEEN BRANSTEN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IN THE MATTER OF THE ARBITRATION BETWEEN

KRITI RIPLEY, LLC

INDEX No. 652851/11

PETITIONER,

-against-

~~PROPOSED~~ ORDER AND JUDGMENT
TO CONFIRM ARBITRATION AWARD

EMERALD INVESTMENTS, LLC

RESPONDENT.
-----X

The Petitioner, Kriti Ripley, LLC ("Kriti"), having applied for confirmation of the award rendered in an arbitration (the "Arbitration") conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association, signed and affirmed on October 28, 2010 ("Award"), a copy of which is attached hereto; and

WHEREAS, the parties, Kriti and respondent Emerald Investments, LLC ("Emerald") entered into an operating agreement on December 29, 2003 ("Operating Agreement"), as the two members of ARP-II, a South Carolina limited liability company owning, developing and managing waterfront real estate, including the operation of a marina, in Charleston, South Carolina.

WHEREAS, the Operating Agreement contains a broad arbitration provision providing for binding arbitration of any disputes among the parties before the American Arbitration Association in New York, New York, and for the exclusive jurisdiction of the courts of the State of New York, and exclusive venue in New York County;

WHEREAS, Emerald commenced the Arbitration demanding:

- (i) A declaration that Emerald is the rightful owner of 70% of the membership shares of ARP-II;
- (ii) A finding that the amounts contributed as loans by affiliates of Kriti to ARP-II should be treated as equity and not debt on the books of ARP-II;
- (iii) An order expelling Kriti from ARP-II;
- (iv) An injunction preventing Kriti from violating the Operating Agreement; and
- (v) Damages and costs of arbitration;

WHEREAS, Emerald further alleged in the Arbitration that Kriti had committed corporate waste and other acts of misconduct in its management of ARP-II since mid-2005 which justified a finding that Kriti had breached the Operating Agreement, Kriti should be disassociated from ARP-II, Kriti had forfeited its membership shares in ARP-II, and/or ARP-II should be dissolved;

WHEREAS, Kriti denied these allegations and counterclaimed that Emerald's actions were grounds for Emerald's forfeiture of its membership shares in ARP-II and/or its dissociation from ARP-II;

WHEREAS, Kriti demanded in the Arbitration (i) dismissal of the arbitration, (ii) forfeiture of Emerald's interests in ARP-II pursuant to South Carolina law, (iii) confirmation that

Emerald holds a 21.3% interest in ARP-II, (iv) a determination of the amount of long term liabilities on the books of ARP-II, and (v) costs and expenses of the arbitration;

WHEREAS, the arbitrators to the Arbitration rendered the Award finding that:

- a. "Kriti continues to the [sic] be the sole member with voting rights [in ARP-II] as determined in the initial arbitration and confirmed by J.H.O. Gammerman," and "may proceed with its business operations of ARP-II";
- b. Emerald owns a 70% membership interest and Kriti owns a 30% membership interest in ARP-II;
- c. The \$7,493,077.35 loaned to ARP-II "from the Kriti's affiliates and Davidson Williams should be treated as loans," and should not to be recast as equity;
- d. All Kriti's actions in managing ARP-II complained of by Emerald, were "well within reasonable business efforts to manage a complex piece of waterfront property," such that Kriti's decisions did not constitute (i) corporate waste, (ii) wrongful conduct adverse to ARP-II's business, (iii) a material breach of the Operating Agreement, or (iv) a material breach of a duty owed to ARP-II or Emerald;
- e. There is "no basis to dissociate Kriti or Emerald from [ARP-II] or to dissolve [ARP-II]";
- f. There was insufficient facts to authorize dissolution of ARP-II pursuant to Article 9.1 of the Operating Agreement; and
- g. There was insufficient facts to authorize dissociation or expulsion of a member of ARP-II pursuant to Article 10.5 of the Operating Agreement; and

WHEREAS, the Award awarded as follows:

- a. Emerald continues to own a 70% membership interest and Kriti continues to own a 30% membership interest in ARP-II;
- b. The loans by Kriti's affiliates to ARP-II shall be treated as loans and not recast as equity, and the amount of the loans are as set forth on the financial statement of ARP-II;
- c. Neither Kriti nor ARP-II committed corporate waste or engaged in any misconduct to support dissociation, dissolution, or an award to Emerald of damages; and any request for dissociation, dissolution or damages against Kriti is denied;
- d. Emerald did not commit sufficient acts to support a finding of dissociation; and any request for dissociation of Emerald is denied;

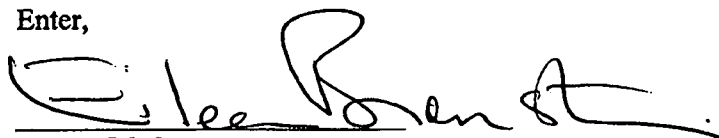
- e. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture;
- f. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request is denied;
- h. Each party shall bear its own costs and expenses incurred in connection with the Arbitration; and
- i. The administrative fees and expenses of the American Arbitration Association totaling \$18,800.00 and the compensation and expenses of the arbitrators totaling \$111,183.98 shall be borne equally by the parties, such that Kriti shall reimburse Emerald the sum of \$59,527.74.

NOW, upon reading and filing the Notice of Petition dated October 18, 2011, with proof of due service thereof, the Petition verified on October 14, 2011, all in support of the application; and the Stipulation executed by the attorneys for the parties dated, December 9, 2011 consenting to entry of this order and judgment confirming the Award, and due deliberation having been had,

THEREFORE, on the motion of Rand Rosenzweig Radley & Gordon LLP, attorneys for petitioner, it is hereby

ORDERED, ADJUDGED AND DECREED that the application to confirm the Award in all respects be and the same hereby is granted, without costs being assessed against any party.

Enter,


J.S.C.

HON. EILEEN BRANSTEN

Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORKKRITI RIPLEY, LLC

Plaintiff/Petitioner,

- against -

EMERALD INVESTMENTS, LLC

Defendant/Respondent.

Index No. 652851/2011**FILED**
DEC 29 2011
NEW YORK
COUNTY CLERK'S OFFICE**CERTIFICATE REQUESTING ENTRY OF JUDGMENT
IN ELECTRONICALLY-FILED CASE**To: The County Clerk, County of New York

Catherine S. Campbell, an attorney admitted to the Bar of the State of New York and counsel for Kriti Ripley, LLC in the above-captioned electronically-filed case, does hereby request that judgment be entered in this case based upon the Order and Judgment, dated December 16, 2011 and entered on December 19, 2011. Pursuant to CPLR 5017 (a), I do hereby certify that the following documents shall constitute the Judgment Roll for this Judgment. Each document is identified by title of the paper, the date filed with the electronic filing system, and the number of the paper as listed on the E-Filing List of Papers Filed.

<u>Title of Document</u>	<u>Number of Paper On E-Filing List of Papers</u>	<u>Date Filed</u>
1) <u>Petition to Confirm Arbitration</u>	No. <u>1</u>	<u>Oct. 18, 2011</u>
2) <u>Exhibits A - F</u>	No. <u>1-1</u>	<u>Oct. 18, 2011</u>
3) <u>Exhibits G - J</u>	No. <u>1-2</u>	<u>Oct. 18, 2011</u>
4) <u>Notice of Petition</u>	No. <u>2</u>	<u>Oct. 18, 2011</u>
5) <u>Stipulation</u>	No. <u>7</u>	<u>Dec. 13, 2011</u>
6) <u>Decision and Order on Motion</u>	No. <u>8</u>	<u>Dec. 19, 2011</u>
7) _____	No. _____	_____
8) _____	No. _____	_____
9) _____	No. _____	_____
10) _____	No. _____	_____

The documents listed above are available on the electronic filing website and may be downloaded and printed as needed.

Dated: Dec. 29, 2011

Catherine S. Campbell (Signature)

Catherine S. Campbell (Name)

Rand Rosenzweig Radley (Firm Name)

445 Hamilton Ave. (Address)

Suite 1201

White Plains, NY 10601

Attorney for Kriti Ripley, LLC

FILED
DEC 29 2011
NEW YORK
COUNTY CLERK'S OFFICE

At IAS Part 3 of the Supreme Court of the
State of New York, held in and for the
County of New York, located at the
Courthouse at 60 Centre St.
New York, New York on the 18 day of
December 2011.

Present: Hon. EILEEN BRANSTEN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IN THE MATTER OF THE ARBITRATION BETWEEN

KRITI RIPLEY, LLC

INDEX No. 652851/11

PETITIONER,

-against-

~~PROPOSED~~ ORDER AND JUDGMENT
TO CONFIRM ARBITRATION AWARD

EMERALD INVESTMENTS, LLC

RESPONDENT.
-----X

The Petitioner, Kriti Ripley, LLC ("Kriti"), having applied for confirmation of the award rendered in an arbitration (the "Arbitration") conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association, signed and affirmed on October 28, 2010 ("Award"), a copy of which is attached hereto; and

WHEREAS, the parties, Kriti and respondent Emerald Investments, LLC ("Emerald") entered into an operating agreement on December 29, 2003 ("Operating Agreement"), as the two members of ARP-II, a South Carolina limited liability company owning, developing and managing waterfront real estate, including the operation of a marina, in Charleston, South Carolina.

WHEREAS, the Operating Agreement contains a broad arbitration provision providing for binding arbitration of any disputes among the parties before the American Arbitration Association in New York, New York, and for the exclusive jurisdiction of the courts of the State of New York, and exclusive venue in New York County;

WHEREAS, Emerald commenced the Arbitration demanding:

- (i) A declaration that Emerald is the rightful owner of 70% of the membership shares of ARP-II;
- (ii) A finding that the amounts contributed as loans by affiliates of Kriti to ARP-II should be treated as equity and not debt on the books of ARP-II;
- (iii) An order expelling Kriti from ARP-II;
- (iv) An injunction preventing Kriti from violating the Operating Agreement; and
- (v) Damages and costs of arbitration;

WHEREAS, Emerald further alleged in the Arbitration that Kriti had committed corporate waste and other acts of misconduct in its management of ARP-II since mid-2005 which justified a finding that Kriti had breached the Operating Agreement, Kriti should be disassociated from ARP-II, Kriti had forfeited its membership shares in ARP-II, and/or ARP-II should be dissolved;

WHEREAS, Kriti denied these allegations and counterclaimed that Emerald's actions were grounds for Emerald's forfeiture of its membership shares in ARP-II and/or its dissociation from ARP-II;

WHEREAS, Kriti demanded in the Arbitration (i) dismissal of the arbitration, (ii) forfeiture of Emerald's interests in ARP-II pursuant to South Carolina law, (iii) confirmation that

Emerald holds a 21.3% interest in ARP-II, (iv) a determination of the amount of long term liabilities on the books of ARP-II, and (v) costs and expenses of the arbitration;

WHEREAS, the arbitrators to the Arbitration rendered the Award finding that:

- a. "Kriti continues to the [sic] be the sole member with voting rights [in ARP-II] as determined in the initial arbitration and confirmed by J.H.O. Gammerman," and "may proceed with its business operations of ARP-II";
- b. Emerald owns a 70% membership interest and Kriti owns a 30% membership interest in ARP-II;
- c. The \$7,493,077.35 loaned to ARP-II "from the Kriti's affiliates and Davidson Williams should be treated as loans," and should not to be recast as equity;
- d. All Kriti's actions in managing ARP-II complained of by Emerald, were "well within reasonable business efforts to manage a complex piece of waterfront property," such that Kriti's decisions did not constitute (i) corporate waste, (ii) wrongful conduct adverse to ARP-II's business, (iii) a material breach of the Operating Agreement, or (iv) a material breach of a duty owed to ARP-II or Emerald;
- e. There is "no basis to dissociate Kriti or Emerald from [ARP-II] or to dissolve [ARP-II]";
- f. There was insufficient facts to authorize dissolution of ARP-II pursuant to Article 9.1 of the Operating Agreement; and
- g. There was insufficient facts to authorize dissociation or expulsion of a member of ARP-II pursuant to Article 10.5 of the Operating Agreement; and

WHEREAS, the Award awarded as follows:

- a. Emerald continues to own a 70% membership interest and Kriti continues to own a 30% membership interest in ARP-II;
- b. The loans by Kriti's affiliates to ARP-II shall be treated as loans and not recast as equity, and the amount of the loans are as set forth on the financial statement of ARP-II;
- c. Neither Kriti nor ARP-II committed corporate waste or engaged in any misconduct to support dissociation, dissolution, or an award to Emerald of damages; and any request for dissociation, dissolution or damages against Kriti is denied;
- d. Emerald did not commit sufficient acts to support a finding of dissociation; and any request for dissociation of Emerald is denied;

- e. Neither Emerald nor Kriti committed sufficient acts to support a finding of forfeiture;
- f. Neither Emerald nor Kriti committed sufficient acts to warrant the issuance of an injunction against either party and such request is denied;
- h. Each party shall bear its own costs and expenses incurred in connection with the Arbitration; and
- i. The administrative fees and expenses of the American Arbitration Association totaling \$18,800.00 and the compensation and expenses of the arbitrators totaling \$111,183.98 shall be borne equally by the parties, such that Kriti shall reimburse Emerald the sum of \$59,527.74.

NOW, upon reading and filing the Notice of Petition dated October 18, 2011, with proof of due service thereof, the Petition verified on October 14, 2011, all in support of the application; and the Stipulation executed by the attorneys for the parties dated, December 9, 2011 consenting to entry of this order and judgment confirming the Award, and due deliberation having been had,

THEREFORE, on the motion of Rand Rosenzweig Radley & Gordon LLP, attorneys for petitioner, it is hereby

ORDERED, ADJUDGED AND DECREED that the application to confirm the Award in all respects be and the same hereby is granted, without costs being assessed against any party.


Clerk of the Court

Enter,


J.S.C.

HON. EILEEN BRANSTEN

FILED

DEC 29 2011

NEW YORK
COUNTY CLERK'S OFFICE

Index No. 652851/2011
(ECF CASE)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN THE MATTER OF THE ARBITRATION BETWEEN
KRITI RIPLEY, LLC,

PETITIONER,

-AGAINST-

EMERALD INVESTMENTS, LLC,

RESPONDENT.

ORDER AND JUDGMENT
TO CONFIRM ARBITRATION AWARD

RAND ROSENZWEIG
RADLEY & GORDON LLP

ATTORNEYS FOR PETITIONER

445 Hamilton Avenue
White Plains, New York 10601

(914) 406-7000

FILED
DEC 29 2011
AT 12:47 P M
N.Y. CO. CLK'S OFFICE

Fred H. Beck & Associates, LLC

8924 Blakeney Professional Drive
Charlotte, NC 28277

Invoice

DATE	INVOICE NO.
7/24/2012	12290 (A-B)

BILL TO
Debbie Pauza Bank of America, N.A. 119 Cross Center Drive NC3-176-01-01 Denver, NC 28037

FEDERAL ID	TERMS	CLASS
56-1892337	Due on receipt	TJM

ITEM	DESCRIPTION	AMOUNT
Appraisal	Ripley Light Yacht Club Marina 95 Ripley Point Drive Charleston, Charleston County, South Carolina 29407 4.08 Net Acres of Vacant Land S/Side of Ripley Point Drive Charleston, Charleston County, South Carolina 29407 (Bank of America Project ID # 12-006751-APR01-001) Mark A. Morgan Thomas J. McDonald	6,500.00
Total		\$6,500.00

Phone #	Fax #
704-544-4884	704-544-6520

Web Site
www.fredhbeck.com

APPRAISAL REPORT LOG

2049

19m

Property: 3.73 Net Acres of Vacant Land		MARK'S NAME ON REPORT	
Address: S/Side of Ripley Point Drive		Due Date: ON/before 7/16/2012	
Parcel # 421-11-00-054 & 421-11-00-274		Received: ~~12/15/11~~ 6.15.12	
City: Charleston, Charleston County, SC 29407		Fee: \$6,500 (TOTAL = 1 INV for 2 properties)	
ID# (Bank of America Project ID # 12-006751-APR01-001)		No. Copies: Complete PDF, only UL to VSIMS	
		Extras: Agreement #12668	
TYPE OF APPRAISAL/REPORT		APPRAISAL PROCEDURES	
Self-Contained	X	Cost	X
Summary		Income	X
Restricted		Sales	X
Market Study			
Other			
PROPERTY RIGHTS APPRAISED		EFFECTIVE DATES	
Fee Simple	X	As Is	X
Leased Fee		As Completed	
Leasehold		As Stabilized	
Other		Other	
CLIENT and Address to:		OTHER:	
Name: Attn: Debbie Pauza, Market Manager		Name	
Firm: Bank of America, N.A. - RE Risk Assessment		Firm	
Address: Mail Code NC3-176-01-01		Address	
119 Cross Center Drive			
City/ST/Zip: Denver, NC 28037		City/ST/Zip	
Email: debbie.pauza@bankofamerica.com		Email	
Phone #: 704-951-8229		Phone #	
Fax #:		Fax #	
Property Contact:		SEND INVOICE TO:	
Contacts: David Williams, CFO 212-599-3530		Contact:	CLIENT
		Email:	
Other: VSIMS Technical assistance 866-439-4613		Phone / Fax #	
DELIVERY INSTRUCTIONS		CONTACT vsims_mail@bankofamerica.com with further questions/concerns.	
REQUEST SENT:			
FILE FOLDER NAME:		Call-up file #11133b (MAM & EP - 2/2011) ✓	
CHECKLISTS:		*** NOTE: APPRAISER(S) is/are required to review, update and/or enter key summary information about the property appraised and associated value conclusions as part of this assignment.	
INVOICE/FILE #: # 12296 (11B)			
PROPERTY TYPE:		VACANT LAND	
NOTES/COMMENTS:		Include FIRREA and USPAP language on Transmittal Letter. MAM must inspect the property. Formatted to MARK for review on (7.23.2012). APPRAISER(S) - See F:drive/Bank Checklists/Bank of America/POLICIES & PROCEDURES (as of 12.3.2011) for Scope of Work and further details pertaining to this assignment. INCLUDE RELIANCE LANGUAGE on Certificate(s) and on Cover letter per Client specifications. Also, include the following statement on transmittal letter: "Bank of America makes no warranties or representations regarding this document or the conclusions contained herein." Reference Agreement # under Project ID # on Cover letter, transmittal letter, and Summary of Facts. APPRAISER(S) - PLEASE READ ENGAGEMENT LETTER FOR FULL ASSIGNMENT DETAILS & be sure to reconcile previous values with current values in Letter of Transmittal, if applicable	

LAND SALES SUMMARY CHART						
Sale Number	Subject	1	2	3	Listing 4	Crab Restaurant sale
Date of Sale		Mar-08	Jul-05	Aug-07	Current	Feb-11
Size in Acres (Uplands)	4.08	2.16	1.71	0.85	2.21	1.61
Zoning	GB-A	HI/MU1	GB-A	GB-A	GB-A	GB-A
Sales Price		\$4,000,000	\$7,700,000	\$1,750,000	\$4,500,000	\$3,331,000
Sale Price Per Acre		\$1,851,844	\$4,495,055	\$2,058,824	\$2,036,191	\$2,081,732
Property Rights						
Adj. Sale Price per Acre						
Financing Terms						
Adj. Sale Price per Acre						
Conditions of Sale					-20%	
Adj. Sale Price per Acre					\$1,628,953	
Market Conditions (Time)		-40%	-65%	-50%	-20%	-5%
Adjusted Price Per Acre		\$1,111,106	\$1,573,269	\$1,029,412	\$1,303,162	\$1,977,646
Location			-10%			
Size/Shape						
Topography						
Zoning		+35%	+20%	+20%	+20%	+20%
Water Frontage Quality		+20%		+50%	+15%	-30%
Total % Adjustments		+55%	+10%	+70%	+35%	-10%
Adjusted Price Per Acre		\$1,722,215	\$1,730,596	\$1,750,000	\$1,759,269	\$1,779,881

Water frontage ratios	0.002464	0.004251	0.004028	0.000000	0.002192	0.009698
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Total permitted units	148	33	45	22	58	42
Densities per acre	36	19	26	26	26	26

Subject units per acre	107.35	185.19	175.44	0.00	95.48	
		+58%	+61%			
		+173%				

Per Acre
 average = \$1,740,520
 Value per acre = \$1,740,000
 Total Value = \$7,099,200
 Rounded = \$7,100,000

7.16.12 report below					
Appraiser's Projection Ripley Light Yacht Club Marina As Is - Stabilized - as of July 2, 2012					
Total of 87 West Slips - 4,178 LF					
87	Income	\$	\$/ Slip	% EGI	
	Gross Slip Rental Income (all 87 Slips)	\$577,344	\$6,636	107.13%	\$577,344
	Less Vacancy @ 20% of Gross Slip Rent	(\$115,469)	-\$1,327	-21.43%	-20.00%
	Gross Slip Rental Inc - Net of Vac.	\$461,875	\$5,309	85.70%	
Plus Other Income Streams					
	Utilities	\$65,000	\$747	12.06%	14.07%
	Marina Goods & Services Sales	\$6,500	\$75	1.21%	1.41%
	Environmental & Safety Fees	\$6,500	\$75	1.21%	1.41%
	Penalties & Late Fees, Disc., Other Inc.	(\$950)	-\$11	-0.18%	-0.21%
	Effective Gross Income	\$538,925	\$6,195	100.00%	
Operating Expenses					
	Salaries & Wages	\$110,000	\$1,264	20.41%	
	Property Insurance	\$50,000	\$575	9.28%	
	Property Taxes	\$36,782	\$423	6.83%	
	Utilities	\$90,000	\$1,034	16.70%	
	Cost of Goods Sold - Marina Shop	\$15,500	\$178	2.88%	
	Advertising	\$870	\$10	0.16%	
	Repairs & Maintenance, Marina Services	\$26,100	\$300	4.84%	
	Regime Fees	\$14,750	\$170	2.74%	
	General & Administrative	\$30,000	\$345	5.57%	
	Management Fees	Inc. in Salaries	N/A	N/A	
	Replacement Reserves	\$10,779	\$124	2.00%	
	Total Operating Expenses	\$384,781	\$4,423	71.40%	
	Net Operating Income	\$154,144	\$1,772	28.60%	
Cap Rate = 9.50%					
Value via Direct Cap = \$1,622,572					
Rounded = \$1,625,000					
Per Slip (Based on 87 total slips) = \$18,678					
Per LF (Based on 4,178 total LF) = \$388.94					

Select View ☐ for each individual property to upload reports and enter required information.

View	Prop#	Property Address	Property Type	Required Elements			Last Submitted	Status	Locked	Select All ☐
				Property	Conclusions	Documents				
☒	001	95 Ripley Point Drive, Charleston, SC (USA)	Special Purpose-Marina	Complete	Complete	Complete	07/24/2012	Submitted	No	
☒	002	S/Side of Ripley Point..., Charleston, SC (USA)	Land-Other	Complete	Complete	Complete	07/24/2012	Submitted	No	