

SUMMONS AND COMPLAINT, DATED JULY 24, 2013 [78-99]

STATE OF NEW YORK  
SUPREME COURT COUNTY OF MONROE

WILLIAM HOWARD, suing in the right of ARCHER  
RD. VISTA LLC, WILLIAM HOWARD, individually,  
and WESTSIDE DEVELOPMENT OF ROCHESTER,  
INC.,

SUMMONS

Plaintiffs,

vs.

Index No. 13-8187

GARY L. POOLER,

Defendant.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the attached Complaint in this action and to serve a copy of your Answer within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty [30] days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of venue as designated in the Complaint is Plaintiff William Howard's residence, which is located in the County of Monroe at Pittsford, New York.

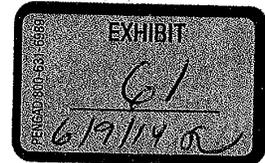
Dated: July 24, 2012

BOND, SCHOENECK & KING, PLLC

By: [Signature]

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STATE OF NEW YORK  
SUPREME COURT COUNTY OF MONROE

WILLIAM HOWARD, suing in the right of ARCHER RD. VISTA LLC, WILLIAM HOWARD, individually, and WESTSIDE DEVELOPMENT OF ROCHESTER, INC.,

COMPLAINT

Plaintiffs,

vs.

Index No. 13-8187

GARY L. POOLER,

Defendant.

Plaintiff Archer Rd. Vista LLC, by one of its Members, William Howard, William Howard, individually, and Westside Development of Rochester, Inc., by their attorneys, Bond, Schoeneck & King, PLLC, for their Complaint, allege upon information and belief as follows:

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PARTIES

1. Archer Rd. Vista LLC (the "Company") is a New York limited liability company with a principal place of business located at 783 Wagnum Road, Fishers, New York 14453.
2. William Howard ("Howard") is a Member of the Company, owning 40% of its membership interests, holding 50% of its voting interests, and is a resident of Pittsford, New York.
3. Westside Development of Rochester, Inc. ("Westside") (collectively with the Company and Howard, "Plaintiffs") is a New York corporation with a principal place

of business located at 3313 Chili Avenue, Rochester, New York 14624. Westside is wholly owned by Howard.

4. Gary L. Pooler ("Pooler") is a Member of the Company, owning 60% of its membership interests, holding 50% of its voting interests, and is, upon information and belief, a resident of Canandaigua, New York. Pooler is also the current Manager of the Company.

## **BACKGROUND**

### **The Company and its Operating Agreement**

5. In or about 2007, the Company was formed for the primary purpose of furthering the development of a residential subdivision known as the Vista Villa's Subdivision ("Vista Villa"), which development consists of approximately 300 acres of land located on Archer Road, Troon Terrace, Prestwick Lane, and Club House Drive, in Chili, New York (the "Property"), which Property consists, in part, of a 260 acre parcel bearing the Tax ID No. 146.19-1-1.11 and a 12.72 acre parcel bearing the Tax ID No. 146.15-2-36.

6. At that time, due solely to Howard's efforts, Vista Villa was already a fully approved 194 home subdivision.

7. Both Howard and Pooler made initial capital contributions to the Company in excess of \$900,000.00 each.

8. On or about June 29, 2007, in connection with the formation of the Company, Pooler and Howard (as Members), Pooler (as Manager), and the Company executed and entered into an Operating Agreement of Archer Rd. Vista LLC (the

"Operating Agreement"). A copy of the Operating Agreement is attached hereto as **Exhibit 1.**

9. Due to his greater development experience, Pooler was designated as the initial Manager of the Company pursuant to the Operating Agreement. Prior to execution of the Operating Agreement, Westside and Howard had used engineers and employees of Pooler's construction business to assist with various wetland, storm water, and soil management issues arising in connection with Westside's development of a property located at 420 Ballantyne Road, Chili, New York (the "Westside Property"). The Westside Property is immediately adjacent to the Property.

10. As Manager of the Company, Pooler has several delineated obligations and responsibilities, in addition to his general obligations and responsibilities, fiduciary and otherwise, pursuant to the New York Limited Liability Company Law. As Manager, Pooler's primary responsibility is to manage the business and affairs of the Company and to make all decisions and take all actions for and on behalf of the Company in furtherance of the purposes, business, and objectives of the Company. (Ex. 1, §5.3).

11. Among other things, Pooler is required to perform his duties as Manager "in good faith, in a manner he reasonably believes to be in or not opposed to the best interests of the Company, and with the care that an ordinarily prudent person in a similar position would use under similar circumstances." (Ex. 1, §5.6(c)).

12. In addition, Pooler's authority as Manager is limited in several ways, including but not limited to Pooler being precluded from authorizing or approving "the sale, transfer, assignment, exchange or other disposition of all or substantially all of the

assets of the Company" without the consent of a Majority in Interest of the Members. (Ex. 1, §5.4(c)).

13. Pooler's duties and obligations are also limited in that although Pooler is responsible for "all site development on the Property," the Operating Agreement specifically provides that "so long as William Howard is a Member of the Company and so long as he performs his duties in a competent, efficient and productive manner, [Howard] shall be primarily responsible for the Property lot sales and Company relations with builders." (Ex. 1, §5.5(d)).

14. In addition, the Operating Agreement includes an express covenant that Pooler, as Manager, "will cause the Company to take such action as may be necessary to: (a) grant a sewer easement to [Westside], located at 420 Ballantyne Road; (b) to grant land use for wet land mitigation to Westside," and to perform certain other obligations for Howard and his affiliates, as set forth in the Operating Agreement. (Ex. 1, §5.14). As a result of these covenants, Westside is a third party beneficiary of the Operating Agreement.

15. This provision in §5.14 is of particular importance to Howard, as Westside intends to develop a sports complex with athletic fields and other recreation-related facilities at the immediately adjacent Westside Property. Because a portion of the Westside Property includes designated wet lands, however, Westside would be unable to obtain the necessary approvals to proceed with its development of the Westside Property without also providing sufficient land for wet land mitigation, which was the reason, in part, for the covenants to Howard and Westside set forth in §5.14. Pooler

knew of these issues based on, among other things, the previous work that his business had done for Westside relating to the Westside Property.

**Pooler Breaches His Duties and Obligations**

16. Since becoming Manager of the Company, Pooler has taken multiple actions that, among other things: (a) contravened the explicit terms of the Operating Agreement; (b) constituted breaches of his fiduciary duties to the Company; and (c) were not in the best interests of the Company. In addition, Pooler has taken steps that indicate his intention to, and active engagement in, anticipatorily breaching and/or repudiating several terms of the Operating Agreement and/or causing the Company to breach its obligations under the Operating Agreement. Further still, Pooler has engaged in conduct that, at a minimum, constitutes a failure by Pooler to manage the business and affairs of the Company with the care that an ordinarily prudent person in a similar position would use under similar circumstances.

17. Among other things, Pooler has stripped the Company's Property of materials that had been stocked there, including sewer supplies and steel, which materials Pooler has, upon information and belief, used for his own personal gain without providing consideration to the Company.

18. Pooler has also stated his intent to simply transfer 200 of the Company's approximately 300 acres to the Town of Chili (the "Town") without receiving any consideration, despite the fact that he is required by the Operating Agreement to "cause the Company to take such action as may be necessary to" grant land use of this acreage to Westside, pursuant to §5.14 of the Operating Agreement, for purposes of

wet land mitigation. In addition, this acreage is necessary in order for the Company, also pursuant to §5.14, to grant a sewer easement to Westside.

19. Beyond merely stating his intent to transfer these 200 acres, Pooler has begun the process of doing so. Specifically, on or about July 9, 2013, Pooler submitted a written plan to the Town designating the lands reserved for Westside mitigation as lands to be transferred to the Town, in explicit contravention of the covenants to Howard and Westside set forth in §5.14. A significant portion of the 200 acres that Pooler intends to have the Company transfer is further developable at a profit to the Company and is also necessary for the sewer easement that the Company is bound to grant to Westside under §5.14, as well.

20. Upon information and belief, the Town intends to use the Property transferred by Pooler in the Company's name for the purpose of developing its own athletic fields complex in direct competition with Westside and to its significant detriment.

21. In short, a gratuitous transfer of approximately two-thirds of the Company's acres would cripple Howard's Westside development in a manner that would render that development virtually impossible and cause Howard a materially adverse loss.

22. Further still, the 200 acres that Pooler intends to transfer are currently subject to a five-year lease with local farmers, and the transfer could expose the Company to a lawsuit for breach of that lease. The transfer of these 200 acres, which are classified as agricultural, would also expose the Company to penalties relating to the removal of the acres from a State agricultural district.

23. In addition to Pooler's gratuitous transfer of Company Property, Pooler has also, upon information and belief, utilized Company assets for his personal gain, and to the Company's detriment, by purposefully devaluing the Property and/or selling or negotiating the sale of the Property at below market value to buyers in exchange for the buyer's agreement to utilize Pooler's construction business in connection with any building that occurs at the Property. Pooler has expressly informed Howard of his intent to sell numerous Property lots in volume at a price below fair market value.

24. In this regard, in addition to undertaking conduct for his personal benefit and to the detriment of the Company, Pooler has also contravened the Operating Agreement, which makes explicit reference to Howard having the responsibility of selling the Property lots and dealing with contractors, such as Pooler's construction business.

25. Further still, Pooler, upon information and belief, hired his own construction business to perform site work at the Property at above-market rates and failed to solicit any third-party quotes for such work before granting it to his own business at such rates.

26. Upon information and belief, Pooler's actions, both individually and in aggregate, have been undertaken for the purpose of devaluing the Company – and, accordingly, Howard's interest therein – for Pooler's personal benefit.

27. Other examples of Pooler's mismanagement are legion. Among other things, Pooler has: refused to remedy easily-resolved issues relating to inaccurate taxation of the Company, resulting in two years of over-taxation; refused to appropriately handle a lease of certain of the Company's Property, resulting in a lawsuit

being filed against the Company; and refused to provide for adequate maintenance of the Property.

28. Pooler has also refused all requests by Howard to cease his misconduct, to abide by the Operating Agreement, and to act in accordance with the best interests of the Company and the Company's commitments.

29. Further, Pooler has shut Howard out from Pooler's communications and negotiations with prospective purchasers of the Property and has failed to provide Howard with information with respect to any agreements between Pooler and such purchasers to utilize Pooler's construction business for developments that ultimately are built on the Property.

30. Indeed, despite multiple and repeated requests by Howard, Pooler has refused to provide Howard with the Company's financial information or other information relating to Pooler's activities and/or spending in connection with his management of the Company.

31. As a result of Pooler's misconduct and mismanagement, the Company is failing financially and otherwise, and it is no longer reasonably practicable for the Company to continue to carry on its business in conformity with the Operating Agreement.

32. Because Pooler owns 60% of the Company's membership interests, holds 50% of the Company's voting interests, and is the Company's sole Manager, it would have been futile for Howard to make a pre-suit demand on the Company prior to initiating this action, which asserts significant wrongdoing on Pooler's part, on the Company's behalf.

33. In addition, demand is futile due to the egregious nature of Pooler's conduct, as alleged herein.

**FIRST CAUSE OF ACTION  
BREACH OF CONTRACT  
(Derivatively on Behalf of the Company)**

34. Howard, on behalf of the Company, incorporates by reference and realleges the allegations in the preceding paragraphs above, as if fully set forth herein.

35. For the reasons set forth above, Pooler intentionally and willfully violated and breached his obligations to the Company under the Operating Agreement by, among other things: (a) usurping the authority given to Howard to be primarily responsible for Property lot sales and Company relations with builders; (b) failing to perform his duties in good faith, in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and with the care that an ordinarily prudent person in a similar position would use under similar circumstances; (c) failing to take the actions required with respect to granting a sewer easement and land use for wet land mitigation to Westside; (d) authorizing the transfer of substantially all of the Company's assets without the consent of a Majority in Interest of the Members, as set forth in the Operating Agreement; and (e) otherwise exceeding the authority granted to him under the Operating Agreement.

36. As a direct and proximate result of Pooler's breaches of the Operating Agreement, the Company has suffered and continues to suffer damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION  
BREACH OF CONTRACT  
(By Howard and Westside)**

37. Howard and Westside incorporate by reference and reallege the allegations in the preceding paragraphs above, as if fully set forth herein.

38. Pursuant to the Operating Agreement, Pooler is required to "cause the Company to take such action as may be necessary to" grant a sewer easement to Westside and to grant land use for wet land mitigation to Westside.

39. Pooler has breached this obligation by, among other things, failing to cause the Company to grant a sewer easement to Westside or to grant land use for wet land mitigation to Westside, as well as by undertaking efforts to transfer that portion of the Property that is necessary to make such grants to Westside.

40. As a direct and proximate result of this breach, Howard and Westside have suffered and continue to suffer damages in an amount to be determined at trial.

**THIRD CAUSE OF ACTION  
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING  
(Derivatively on Behalf of the Company)**

41. Howard, on behalf of the Company, incorporates by reference and realleges the allegations in the preceding paragraphs above, as if fully set forth herein.

42. As a party to the Operating Agreement, Pooler owed the Company a duty of good faith and fair dealing implicit in the Operating Agreement.

43. For the reasons set forth above, Pooler has intentionally and willfully breached and violated this duty of good faith and fair dealing.

44. As a direct and proximate result of this breach, the Company has suffered and continues to suffer damages in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION  
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING  
(By Howard and Westside)**

45. Howard and Westside incorporate by reference and reallege the allegations in the preceding paragraphs above, as if fully set forth herein.

46. As a party to the Operating Agreement, Pooler owed Howard and Westside a duty of good faith and fair dealing implicit in the Operating Agreement, and specifically with respect to the requirements set forth in §5.14.

47. For the reasons set forth above, Pooler has intentionally and willfully breached and violated this duty of good faith and fair dealing.

48. As a direct and proximate result of this breach, Howard and Westside have suffered and continue to suffer damages in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION  
ANTICIPATORY BREACH OF CONTRACT  
(Derivatively on Behalf of the Company)**

49. Howard, on behalf of the Company, incorporates by reference and realleges the allegations in the preceding paragraphs above, as if fully set forth herein.

50. As set forth above, to the extent that Pooler has not already executed the transfer of 200 acres of the Property to the Town, Pooler has stated that he intends to do so and has begun taking the necessary steps to do so. In addition, Pooler has stated his intent to usurp Howard's responsibility for selling the Property lots and to sell the Property lots in volume at a price less than fair-market value.

51. Accordingly, Pooler has anticipatorily breached the Operating Agreement by stating his intention to not comply with the Operating Agreement and by taking steps

to take both himself and the Company out of a position to comply with the terms of the Operating Agreement.

52. As a result of Pooler's anticipatory breach of the Operating Agreement, the Company has suffered or will suffer damages in an amount to be determined at trial.

**SIXTH CAUSE OF ACTION  
ANTICIPATORY BREACH OF CONTRACT  
(By Howard and Westside)**

53. Howard and Westside incorporate by reference and reallege the allegations in the preceding paragraphs above, as if fully set forth herein.

54. As set forth above, to the extent that Pooler has not already executed the transfer of 200 acres of the Property to the Town, Pooler has stated that he intends to do so and has begun taking the necessary steps to do so.

55. By taking such steps, Pooler has precluded both himself and the Company from complying with the terms of the Operating Agreement, specifically with respect to §5.14.

56. Accordingly, Pooler has anticipatorily breached the Operating Agreement by stating his intention to not comply with the Operating Agreement and by precluding both himself and the Company from complying with the terms of the Operating Agreement.

57. As a result of Pooler's anticipatory breach of the Operating Agreement, Howard and Westside have suffered or will suffer damages in an amount to be determined at trial.

**SEVENTH CAUSE OF ACTION  
BREACH OF FIDUCIARY DUTY  
(Derivatively on Behalf of the Company)**

58. Howard, on behalf of the Company, incorporates by reference and realleges the allegations in the preceding paragraphs above, as if fully set forth herein.

59. As Manager of the Company, Pooler owed the Company fiduciary duties, including the duty of loyalty, duty to act in good faith, and duty to exercise reasonable care.

60. Through his willful violation of the Operating Agreement and other conduct alleged herein, Pooler breached each of these fiduciary duties to the Company.

61. Pooler's breach of fiduciary duty was, among other things, intentional and deliberate.

62. As a result of Pooler's breaches of his fiduciary duties, the Company has suffered damages in an amount to be determined at trial.

63. In addition, Howard, suing in the right of the Company, is entitled to recover attorneys' fees by virtue of the intentional willful, deliberate, and wanton disregard by Pooler of his fiduciary duties.

**EIGHTH CAUSE OF ACTION  
ACCOUNTING  
(Derivatively on Behalf of the Company)**

64. Howard, on behalf of the Company, incorporates by reference and realleges the allegations in the preceding paragraphs above, as if fully set forth herein.

65. As a result of Pooler's above-described conduct, the Company is entitled to an accounting from Pooler of all transactions and agreements entered into by Pooler on behalf of the Company in connection with which assets of the Company have been

or are contemplated to be transferred in any manner, and the Company is further entitled to a judgment compelling Pooler to make restitution to the Company of all misappropriated, wasted, and/or wrongfully transferred assets identified through such accounting.

**NINTH CAUSE OF ACTION  
CONSTRUCTIVE TRUST  
(Derivatively on Behalf of the Company)**

66. Howard, on behalf of the Company, incorporates by reference and realleges the allegations in the preceding paragraphs above, as if fully set forth herein.

67. As Manager of the Company, Pooler is a fiduciary with the obligation to ensure that all transfers and contemplated transfers of assets of the Company are made by, for the benefit of, and on behalf of, the Company.

68. In addition, pursuant to the Operating Agreement, Pooler expressly and impliedly promised that all transfers and contemplated transfers of assets of the Company would be made by, for the benefit of, and on behalf of, the Company.

69. Pooler breached his express and implied promises and agreements through his above-described conduct, and has been, upon information and belief, unjustly enriched as a result.

70. Accordingly, the Company is entitled to the imposition of a constructive trust upon all assets identified by the above-referenced accounting as having been misappropriated, wasted, and/or wrongfully transferred by Pooler, and a judgment compelling Pooler to make restitution to the Company of all such assets subject to such constructive trust.

**TENTH CAUSE OF ACTION  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF  
(Derivatively on Behalf of the Company)**

71. Howard, on behalf of the Company, incorporates by reference and realleges the allegations in the preceding paragraphs above, as if fully set forth herein.

72. As alleged herein, Pooler's attempt to transfer 200 acres of the Company's Property to the Town violates several provisions of the Operating Agreement, including but not limited to §5.14, which requires Pooler to cause the Company to take such action as may be necessary to: (a) grant a sewer easement to Westside; and (b) grant land use for wet land mitigation to Westside.

73. Because the transfer of these 200 acres would, among other things, render the Company unable to meet its obligations to Westside and Howard under §5.14, such transfer would violate the Operating Agreement.

74. In addition, by transferring approximately two-thirds of the Company's assets to the Town without first obtaining the consent of a Majority in Interest of the Members, as defined in the Operating Agreement, Pooler would be in violation of §5.4 of the Operating Agreement, which prohibits Pooler from authorizing or approving the transfer or other disposition of all or substantially all of the assets of the Company.

75. Pursuant to §12.11 of the Operating Agreement, Howard is entitled, as a Member of the Company, to seek injunctive relief to prevent actual or threatened breaches of the Operating Agreement and specifically to enforce the terms and provisions thereof.

76. Accordingly, pursuant to §12.11 of the Operating Agreement and the common law, Howard, on behalf of the Company, is entitled to a judgment:

(a) declaring that Pooler's unilateral efforts to transfer 200 acres of the Company's Property constitutes a violation of the Operating Agreement; and (b) permanently enjoining, restraining, and prohibiting Pooler, and all persons acting in concert with him, on his behalf, or at his direction, from taking any actions to enter into, execute, perform, or further such transfer of the Company's Property.

**ELEVENTH CAUSE OF ACTION  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF  
(By Howard and Westside)**

77. Howard and Westside incorporate by reference and reallege the allegations in the preceding paragraphs above, as if fully set forth herein.

78. As alleged herein, Pooler's attempt to transfer 200 acres of the Company's Property to the Town violates several provisions of the Operating Agreement, including but not limited to §5.14, which requires Pooler to cause the Company to take such action as may be necessary to: (a) grant a sewer easement to Westside; and (b) grant land use for wet land mitigation to Westside.

79. Because the transfer of these 200 acres would, among other things, render the Company unable to meet its obligations to Westside and Howard under §5.14, such transfer would violate the Operating Agreement.

80. In the event that the transfer occurs, Howard and Westside would be irreparably damaged in that the Westside development project relies on obtaining the sewer easement and wet land mitigation land use, absent which the Westside project will not be possible to complete.

81. Accordingly, Howard and Westside are entitled to a judgment: (a) declaring that Pooler's unilateral efforts to transfer 200 acres of the Company's

Property constitutes a violation of the Operating Agreement; and (b) permanently enjoining, restraining, and prohibiting Pooler, and all persons acting in concert with him, on his behalf, or at his direction, from taking any actions to enter into, execute, perform, or further such transfer of the Company's Property.

**TWELFTH CAUSE OF ACTION  
REMOVAL OF POOLER AS MANAGER  
(Derivatively on Behalf of the Company)**

82. Howard, on behalf of the Company, incorporates by reference and realleges the allegations in the preceding paragraphs above, as if fully set forth herein.

83. Pursuant to §5.8 of the Operating Agreement, Pooler may be removed as Manager for cause in the event that he: (a) willfully or intentionally violates, or recklessly disregards, his duties to the Company; or (b) willfully or intentionally acts or omits to act where such action or omission causes a material adverse effect to the Company or its Members.

84. As alleged herein, Pooler, through his actions and omissions, has willfully and intentionally violated, or at a minimum has recklessly disregarded, his duties to the Company, and Pooler has also willfully and intentionally acted in such a manner as to cause a material adverse effect to the Company and to Howard.

85. Accordingly, Howard, on behalf of the Company, is entitled to a judgment: (a) declaring that Pooler has willfully and intentionally violated, or a minimum recklessly disregarded, his duties to the Company; and/or has willfully and intentionally acted in such a manner as to cause a material adverse effect to the Company and to Howard; and (b) requiring that Pooler be removed as Manager of the Company.

**THIRTEENTH CAUSE OF ACTION  
DISSOLUTION OF THE COMPANY AND APPOINTMENT OF RECEIVER  
(By Howard, Individually and on Behalf of the Company)**

86. Howard, individually on behalf of the Company, incorporates by reference and realleges the allegations in the preceding paragraphs above, as if fully set forth herein.

87. Limited Liability Company Law §702 provides for judicial dissolution of a limited liability company on application by or for a member and provides that dissolution is appropriate whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

88. In addition, the Operating Agreement provides in §11.1(b) that dissolution shall occur upon the entry of a decree of judicial dissolution of the Company.

89. As alleged herein, by virtue of Pooler's conduct, it is not reasonably practicable for the Company to carry on its business in conformity with the Operating Agreement.

90. Accordingly, the Court should enter a decree dissolving the Company pursuant to Limited Liability Company Law §702.

91. Pursuant to Limited Liability Company Law §703, the Court may, in the event of a dissolution, appoint a receiver in connection with the winding up of a dissolved limited liability company's affairs.

92. Accordingly, Howard seeks a decree, in accordance with Limited Liability Company Law §703, appointing a receiver to manage the winding up of the Company upon the dissolution of the Company.

**WHEREFORE**, William Howard, suing in the right of Archer Rd. Vista LLC, William Howard, individually, and Westside Development of Rochester, Inc., demand judgment as follows:

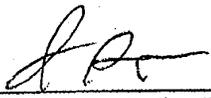
- a. on Count I, against Pooler in an amount to be determined at trial;
- b. on Count II, against Pooler in an amount to be determined at trial;
- c. on Count III, against Pooler in an amount to be determined at trial;
- d. on Count IV, against Pooler in an amount to be determined at trial;
- e. on Count V, against Pooler in an amount to be determined at trial;
- f. on Count VI, against Pooler in an amount to be determined at trial;
- g. on Count VII, against Pooler in an amount to be determined at trial;
- h. on Count VIII, ordering that an accounting be had of the affairs of the Company, by which Pooler be called to account for all transactions and agreements entered into by Pooler on behalf of the Company in connection with which assets of the Company have been or are contemplated to be transferred in any manner, and compelling Pooler to make restitution to the Company of all misappropriated, wasted, and/or wrongfully transferred assets identified through such accounting;
- i. on Count IX, ordering that a constructive trust be imposed upon all assets identified as having been misappropriated, wasted, and/or wrongfully transferred by Pooler, and a judgment compelling Pooler to make restitution to the Company of all such assets subject to such constructive trust;

- j. on Count X, declaring that Pooler's unilateral efforts to transfer 200 acres of the Company's Property constitutes a violation of the Operating Agreement and permanently enjoining, restraining, and prohibiting Pooler, and all persons acting in concert with him, on his behalf, or at his direction, from taking any actions to enter into, execute, perform, or further such transfer of the Company's Property;
- k. on Count XI, declaring that Pooler's unilateral efforts to transfer 200 acres of the Company's Property constitutes a violation of the Operating Agreement and permanently enjoining, restraining, and prohibiting Pooler, and all persons acting in concert with him, on his behalf, or at his direction, from taking any actions to enter into, execute, perform, or further such transfer of the Company's Property;
- l. on Count XII, declaring that Pooler has willfully and intentionally violated, or at a minimum recklessly disregarded, his duties to the Company and/or has willfully and intentionally acted in such a manner as to cause a material adverse effect to the Company and to Howard; and requiring that Pooler be removed as Manager of the Company;
- m. on Count XIII, entering a decree judicially dissolving the Company and appointing a receiver to wind up the Company's affairs, pursuant to Limited Liability Law §§702 and 703;

- n. on all counts, awarding attorneys fees, costs, disbursements, and prejudgment interest to Howard and/or Westside;
- o. on all counts, awarding such other and further relief as the Court deems just and proper.

Dated: July 24, 2013

BOND, SCHOENECK & KING, PLLC

By:  \_\_\_\_\_

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