

A03000000047

Division of Corporations

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LIMITED PARTNERSHIP AMENDMENT

NRPII INVESTORS, LLLP

Name	
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Advisory Agreement	DOC
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**SECOND CERTIFICATE OF AMENDMENT TO
CERTIFICATE OF LIMITED PARTNERSHIP OF
NRPII INVESTORS, LLLP**

The undersigned, being the sole general partner of NRPII Investors, LLLP, a Florida limited liability limited partnership (the "Limited Partnership"), the Certificate of Limited Partnership of said Limited Partnership having been filed January 9, 2003 under Document No. A03000000047, does hereby certify, attest and serve notice, pursuant to the provisions of Section 620.109 of the Florida Revised Uniform Limited Partnership Act, that the Certificate of Limited Partnership of the Limited Partnership is hereby amended by the addition of Paragraphs 7.1, 7.2, 7.3 and 7.4 as follows:

"7.1 Notwithstanding anything to the contrary set forth in this Certificate of Limited Partnership, Paragraphs 7.1, 7.2, 7.3 and 7.4 herein shall apply and govern for so long as NRPII Partners, LLLP, a Florida limited liability limited partnership (the "Investment Partnership"), and NRPII GP, LLLP, a Florida limited liability limited partnership ("Co-Borrower"), are borrowers under that certain mezzanine loan (the "Loan") in the original principal amount of \$17,430,000 made by Lehman Brothers Holdings Inc. d/b/a Lehman Capital, a division of Lehman Brothers Holdings Inc. ("Lender") to the Investment Partnership and the Co-Borrower pursuant to that certain Loan Agreement dated on or about May 22, 2003 by and among Lender, the Investment Partnership and the Co-Borrower (the "Loan Agreement"). When the Investment Partnership and the Co-Borrower are no longer borrowers under the Loan, Paragraphs 7.1, 7.2, 7.3 and 7.4 shall no longer remain in effect and shall be null and void; provided, that until such time, Paragraphs 7.1, 7.2, 7.3 and 7.4 shall govern over any provision in this Certificate of Limited Partnership.

7.2 The purpose of the Limited Partnership is (i) to act as a limited partner of the Investment Partnership, the business of which is to act as the limited partner of New River Phase II, LLLP (the "Operating Partnership"), (ii) to acquire, own, hold, manage, operate, pledge, sell or otherwise dispose of and/or mortgage or otherwise encumber or borrow against all or any part of the Limited Partnership's limited partner interest in the Investment Partnership and (iii) to do any and all things incident thereto or in connection therewith. Without the written consent of all Partners, the Limited Partnership shall not engage in any other business or activity.

7.3 For as long as the Loan remains outstanding and not paid in full, the Limited Partnership shall comply with the following provisions, unless expressly permitted or required otherwise by the Loan Agreement and such other documents evidencing the Loan (the "Loan Documents"):

- (a) SPE General Partner. At least one general partner of the Limited Partnership must be a special purpose entity satisfying the requirements set forth in the Loan Agreement (the "SPE General Partner"). Without limiting the foregoing, the SPE General Partner's purpose shall be limited to serving as a general partner of the Limited Partnership and serving as a general partner of

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NRPII Ventures, LLLP, a Florida limited liability limited partnership. Upon the dissociation or withdrawal of the SPE General Partner as a general partner of the Limited Partnership, the Limited Partnership shall (i) appoint a new SPE General Partner, and (ii) agree to continue the existence of the Limited Partnership and (iii) agree not to liquidate the assets of the Limited Partnership (except as permitted under the Loan Documents) without the consent of the holder of the Loan. Such holder may continue to exercise all of its rights under the Loan Documents and shall retain the collateral until the debt has been paid in full or otherwise completely discharged.

- (b) Subordination of Indemnification Obligations. The Limited Partnership's obligation, if any, to indemnify its partners, representatives, employees or agents, or representatives, employees or agents of the partners, shall be fully subordinated to the Loan and the Loan Documents and shall not constitute a claim against it in the event that cash flow in excess of amounts necessary to pay holders of the Loan is insufficient to pay such obligations.
- (c) Certain Actions Requiring Unanimous Vote of the Partners. The vote of all of the partners of the Limited Partnership (including the vote of the independent manager of the SPE General Partner) shall be required in order to (i) take any action that might cause the Limited Partnership to become insolvent; (ii) commence any case, proceeding or other action on behalf of the Limited Partnership under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors; (iii) institute a proceeding to have the Limited Partnership adjudicated as bankrupt or insolvent; (iv) consent to the institution of bankruptcy or insolvency proceedings against the Limited Partnership; (v) file a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of the Limited Partnership under any federal or state law relating to bankruptcy; (vi) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Limited Partnership or a substantial portion of its properties; (vii) make any assignment for the benefit of the Limited Partnership's creditors; (viii) fail to defend, oppose, contest or object to the institution of bankruptcy or insolvency proceedings against the Limited Partnership; (ix) dissolve or liquidate; (x) amend Paragraphs 7.1, 7.2, 7.3 or 7.4 of this Certificate of Limited Partnership or (xi) take any action in furtherance of any of the foregoing.
- (d) Separateness Provisions. The Limited Partnership shall not (i) engage in any business or activity other than as set forth in Paragraph 7.2; (ii) fail to pay its debts and liabilities from its assets as the same shall become due, subject to the Limited Partnership's right to dispute the amount or payment date of any debt or liability; (iii) merge into or consolidate with any person or entity, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in

each case, the consent of the Lender; (iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable laws of the jurisdiction of its organization or formation, or, without the prior written consent of the Lender, amend, modify, terminate or fail to comply with the provisions of its organizational documents, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect its ability to perform its obligations under the Loan Documents; (v) own any subsidiary, or make any investment in any other entity without the consent of the Lender; (vi) commingle its assets with the assets of any other entity; (vii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Loan, (B) that certain construction loan made to the Operating Partnership by Bank of America, N.A. in the principal amount of \$58,800,000 (the "BoA Loan") and (C) operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is paid when due; (viii) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other entity; except that the Limited Partnership's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial statements of an affiliate, provided that such consolidated financial statements contain a footnote indicating that the Limited Partnership is a separate legal entity and that it maintains separate books and records; (ix) enter into any contract or agreement with any general partner, member, shareholder, principal, affiliate, or guarantor of the obligations of the Limited Partnership, or any affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties other than any general partner, member, shareholder, principal or affiliate thereof or as provided by the documents evidencing the Loan; (x) seek the dissolution of the Limited Partnership; (xi) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other entity; (xii) hold itself out to be responsible for the debts of another person or entity except pursuant to the Loan; (xiii) make any loans or advances to any entity; (xiv) fail to file its own tax returns or file a consolidated federal income tax return with any entity (unless prohibited or required, as the case may be, by applicable law); (xv) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (A) to mislead others as to the identity with which such other party is transacting business, or (B) to suggest that the Limited Partnership is responsible the debts of any third party (including any general partner, member, shareholder, principal or affiliate thereof) except pursuant to the Loan Documents; (xvi) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business

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operations; (xvii) fail to maintain its own separate stationery, invoices and checks bearing its own name; (xviii) fail to pay the salaries of its own employees; (xix) fail to maintain a sufficient number of employees in light of its contemplated business operations; (xx) fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an affiliate) among the entities sharing such expenses and to use separate stationery, invoices and checks; (xxi) agree to, enter into or consummate any transaction which would render the Limited Partnership unable to furnish a certification that (A) the Limited Partnership is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA, (B) the Limited Partnership is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (C) one or more of the following circumstances is true: (1) equity interests in the Limited Partnership are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2), (2) less than 25 percent of each outstanding class of equity interests in the Limited Partnership are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2), or (3) the Limited Partnership qualifies as an "operating company" or "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e) or an investment company registered under The Investment Company Act of 1940; (xxii) Subject to Section 7.3(c)(v), file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors or (xxiii) fail to correct any known misunderstanding regarding its separate identity."

- (e) Dissolution. Subject to Section 7.3(c)(v), the vote of the Partners holding a majority of the percentage interests in the Limited Partnership is sufficient to continue the life of the Limited Partnership if an event occurs which causes the dissolution of the Limited Partnership. If the required consent of the Partners to continue the Limited Partnership is not obtained, the Limited Partnership will not liquidate the collateral securing the Loan (except as permitted under the Loan Documents) without the consent of the holder of the Loan. Such holder may continue to exercise all of its rights under the Loan Documents and will be able to retain the collateral securing the Loan until the Loan has been paid in full or otherwise completely discharged.

7.4 Each Partner's interest in the Limited Partnership is a "security" governed by Article 8 of the Uniform Commercial Code in effect from time to time in the State of Florida."

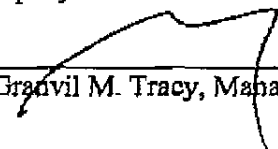
All other provisions of the Certificate of Limited Partnership of the Limited Partnership shall remain in full force and effect without any modification thereof.

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IN WITNESS WHEREOF, this Certificate of Amendment to Certificate of Limited Partnership of the Limited Partnership has been duly executed in the name and on behalf of the sole general partner of the Limited Partnership as of the 14th day of May, 2003.

GENERAL PARTNER:

NEW RIVER II GP, LLC, a Florida limited liability company

By: 
Garvil M. Tracy, Manager

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