SECOND AMENDED AND RESTATED OPERATING AGREEMENT OF LOFTS 21 LLC
A New York Limited Liability Company

THIS SECOND AMENDED AND RESTATED OPERATING AGREEMENT (this "**Agreement**"), of LOFTS 21 LLC (the "**Company**"), dated effective as of February __, 2011, is entered into by and among AdvanceStar LLC, a New York limited liability company, as the Managing Member of the Company ("**Managing Member**"), Ryder Madison LLC ("**Ryder**"), David J. Mitchell ("**Mitchell**"), Kerry Wellington ("**Wellington**") and those other persons or entities executing this Agreement as of the date hereof as "Class A Members," and any other person or entity that is hereafter admitted as a member and becomes a party to this Agreement in accordance with the terms of this Agreement.

Whereas, the Company was caused to be formed by Wellington by the filing of Articles of Organization in the Office of the Secretary of State of the State of New York on July 1, 2010, and

Whereas, pursuant to that certain original operating agreement of the Company dated as of July 1, 2010, Wellington was the sole member of the Company; and

Whereas, the Company entered into that certain Purchase and Sale Agreement, dated as of July 30, 2010, by and between the Company, as Purchaser, and Plumbers No. 1 Real Estate Col., Inc., as Seller (the "**Purchase Contract**"), providing for the purchase and sale of that certain land and improvements thereon located at 21 East 26th Street, New York, New York (the "**Property**) for a purchase price of $13,250,000; and

Whereas, Mitchell and Ryder were admitted as members of the Company and in connection therewith Wellington, Mitchell and Ryder amended and restated the original operating agreement of the Company as of September 2010; and

Whereas, the existing members of the Company desire to admit additional members to the Company who will contribute additional capital to the Company for the purpose of acquiring and making certain improvements to the Property and providing working capital, and in connection therewith the parties desire to amend and restate the operating agreement of the Company to specify the terms and conditions that will govern the operation of the Company and the relationship of the members;

Now, therefore, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Defined Terms**. As used in this Agreement, the following terms shall have the following respective meanings:

"Act" means the New York Limited Liability Company Act, as the same may be amended from time to time.

"**Additional Profit Participation**" means the sum of (i) all initial capital contributions made by the Class A Members as of the date hereof, plus (ii) $400,000 attributable to the Class B

Member. For example, if the Class A Members contribute $7,000,000 as of the date hereof, the Additional Profit Participation is $7,400,000.

"**Affiliate**" as to a specific individual means any (i) Family Member of the individual, (ii) trust, partnership, company or other entity in which the individual and/or any one or more of the individual's Family Members own a majority of the beneficial interests, and (iii) entity controlled by the individual or such individual and one or more of the foregoing; and as to a specific entity means any (x) Principal of such entity, and (y) any Person that, directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the entity (the term "control" for this purpose, shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, independently to select the managing partner of a partnership or the managers of a limited liability company, or otherwise to have the power independently to remove and then select a majority of those Persons exercising governing authority over an entity, and control shall be conclusively presumed in the case of the direct or indirect ownership of fifty (50%) percent or more of the equity interests).

"**Assignee**" means a Person to whom Economic Rights have been assigned or transferred as permitted by or otherwise in accordance with the terms of this Agreement.

"**Available Cash Flow**" with respect to any period means the excess, if any, of (A) the sum of (i) all amounts actually received by the Company during such period, including capital contributions and loan proceeds, plus (ii) any amounts withdrawn from reserves during such period, over (B) the sum of (x) all expenses paid and capital expenditures made by the Company during such period, including without limitation the amount of any payments required to be made during such period with respect to the Company's acquisition financing, or on account of any Guaranty Repayment Loans, and (y) any additions to reserves during such period for anticipated expenses or expenditures, as required by any loan agreements to which the Company is subject or otherwise as determined by the Managing Member.

"**Class A Assignee**" means an Assignee of Economic Rights that have been transferred directly or indirectly ultimately from a Class A Member.

"Class A Interest" means the percentage in which a Class A Member or Class A Assignee shares in distributions of the Company to or among Class A Members and Class A Assignees, as the same may be changed from time to time to reflect the permitted Transfer of Class A Economic Rights or Class A membership interests or otherwise in accordance with this Agreement. Initially, the Class A Interest of each Class A Member who executes this Agreement as of the date hereof shall be a percentage determined by dividing the Class A Member's initial capital contribution by the total initial capital contributions made by all such Class A Members.

"Class A Member" means any Person signing this Agreement as a "Class A Member," any additional Person admitted as a Class A Member in accordance with the terms of this Agreement and any Assignee of any such Person who has been admitted as a Class A Member in accordance with the terms of this Agreement

"**Class B Assignee**" means an Assignee of Economic Rights that have been transferred directly or indirectly ultimately from a Class B Member.

"Class B Interest" means the percentage in which a Class B Member or Class B Assignee shares in distributions of the Company to or among Class B Members and Class B Assignees, as the same may be changed from time to time to reflect the permitted Transfer of Class B Economic Rights

or Class B membership interests or otherwise in accordance with this Agreement. The Class B Interest of Ryder as of the date hereof is one hundred percent (100%).

"Class B Member" means Ryder, and any Assignee who has directly or indirectly acquired Economic Rights with respect to Ryder's Class B Interest ultimately from Ryder and who has been admitted as a Class B Member in accordance with the terms of this Agreement.

"Company Interest" means, (i) in the case of the Managing Member, zero; (ii) in the case of a Class A Member or Class A Assignee, the percentage which the Class A Member's initial capital contribution or Class A Assignee's share of its predecessor Class A Member's initial capital contribution constitutes of the Additional Profit Participation; and (iii) in the case of all Class B Members and all Class B Assignees, in the aggregate, the percentage which $400,000 constitutes of the Additional Profit Participation, in each case as the same may be changed from time to time to reflect the permitted Transfer of Economic Rights or membership interests or otherwise in accordance with this Agreement. For example, if the Class A Members initially contribute $7,000,000 to the Company, the Company Interest of a Class A Member who initially contributed $1,500,000 would be the percentage corresponding to $1,500,000/$7,400,000, or 20.27%, and the Company Interest of Ryder as the sole Class B Member under such circumstances would be the percentage corresponding to $400,000/$7,400,000, or 5.405%. As of the date hereof, the Company Interests of the Class A Members and Class B Member are the percentages set forth on **Exhibit A** hereto.

"Deemed Contribution" means, in the case of the Class B Members and Class B Assignees, the aggregate sum of $800,000. For the avoidance of doubt, the Deemed Contribution is not an actual capital contribution, is not credited to the Class B Member's Capital Account, and represents an amount to be distributed hereunder.

"**Development Fee Distribution**" is defined in Section 7(b) hereof.

"**Economic Rights**" are a Person's rights to receive distributions and allocations of Profits and Losses, or items of income, gain, loss and expense, as provided herein. A Person's Economic Rights do not include any rights to manage the business or affairs of the Company, to amend this Agreement, or to vote on or approve any other actions or decisions under this Agreement, and also do not include any obligation to make capital contributions or any other obligations under this Agreement.

"Family Member" as to any individual means the parents, aunts, uncles, nieces and nephews, spouse, children (including natural and adopted children and stepchildren), grandchildren and other lineal descendants of the designated natural person to the third degree of consanguinity, the spouse of any such child, grandchild or other descendant, and the brothers and sisters (whether natural or adopted) of the individual and the lineal descendants of such brothers and sisters (whether natural or adopted) to the third degree of consanguinity.

"Majority-in-Interest of the Class A Members" means approval of Class A Members and Class A Assignees holding a majority-in-interest of all of the Class A Interests of the Class A Members and Class A Assignees.

"**Member**" means any original signatory to this Agreement, including Managing Member (and any successor thereto) and any other Person that is admitted as a member of the Company in accordance with the terms of this Agreement.

"**MM Assignee**" means an Assignee of Economic Rights that have been transferred directly or indirectly ultimately from the Managing Member.

"MM Interest" means the percentage in which the Managing Member or a MM Assignee shares in distributions of the Company to or among the Managing Member and MM Assignees, as the same may be changed from time to time to reflect the permitted Transfer of Economic Rights or otherwise in accordance with this Agreement. The MM Interest of the Managing Member as of the date hereof is one hundred percent (100%).

"Outstanding Development Fee Distribution" as of any date means the total Development Fee Distribution as of such date reduced by all distributions pursuant to Sections 6(a)(ii) and 10(h) prior to such date.

"Person" means an individual, corporation, trust, association, unincorporated association, estate, partnership, joint venture, limited liability company or other legal entity, including a governmental entity.

"Principal" as to any entity means a shareholder, partner, member, or other equity owner of such entity or, in the case of a trust, the grantor or any beneficiary of such trust.

"Supermajority-in-Interest of the Class A Members" means approval of Class A Members and Class A Assignees holding at least seventy five percent (75%) of all of the Class A Interests of the Class A Members and Class A Assignees.

"Transfer" means sell, assign, pledge, grant a security interest in, grant an option to or otherwise transfer.

"Unreturned Capital" as of any date and as to any Class A Member or Class A Assginee, means an amount (but not less than zero) equal to the excess of (i) the aggregate amount of such Member's or Assignee's imputed share of Capital Contributions prior to such date, over (ii) the aggregate amount of Available Cash distributed to such Member or Class A Assignee and/or imputed as distributed previously to such Assignee before such date pursuant to Section 6(a)(i) and Section 10(d), it being understood that a Class A Assignee shall, unless otherwise provided in the instrument of Transfer, inherit the same portion of the Transferor's Unreturned Capital as of the date of Transfer as the Class A Interest being Transferred.

"Unreturned Deemed Contribution" as of any date and as to any Class B Member or Class B Assignee, means the excess of (i) the Class B Member's or Assignee's share of the Deemed Contribution, over (ii) the aggregate amount of Available Cash distributed to the Class B Member or Class B Assignee and/or imputed as distributed previously to such Assignee before such date pursuant to Section 6(a)(i) and Section 10(e), it being understood that a Class B Member or Class B Assignee shall, unless otherwise provided in the instrument of Transfer, inherit the same portion of the Transferor's Unreturned Deemed Contribution as of the date of Transfer as the Class B Interest being Transferred.

2. **Term; Dissolution.** The Company shall continue in existence until the occurrence of any of the following events:

(a) The sale of all or substantially all of the assets of the Company other than in the ordinary course of business (i.e., not including the sale of condominium units of the Property in the ordinary course of business), provided that if a note or purchase money mortgage is taken back in connection with such sale then the Company shall not dissolve until such note or purchase money mortgage is paid in full; or

(b) The written election of the Managing Member and a Majority-in-Interest of the Class A Members to dissolve the Company.

The death, incompetence, withdrawal, insolvency or bankruptcy of a Member shall not dissolve the Company.

3. **Purposes.** The purpose of the Company is to acquire, own, hold, finance, manage, renovate or improve, deal with (including without limitation the possible conversion into a residential and retail condominium) and ultimately lease, sell or otherwise dispose of the Property, and to engage in any and all other activities related thereto permitted to be engaged in or conducted by a limited liability company under the Act.

4. **Contributions.**

(a) Capital Contributions. The initial capital contributions previously made or to be made by the Members in connection with the execution and delivery of this Agreement are set forth in Exhibit A hereto. Any additional capital contributions made by any Member will be reflected in the books and records of the Company.

(b) Additional Contributions. Except as provided in Sections 4(c) and 4(d), no Member shall have any obligation to contribute additional capital to the Company or to loan funds to the Company, to pledge any personal assets as security for any Company debts or obligations or to guaranty any debts or obligations of the Company. No existing Member or Affiliate of an existing Member shall make any additional contribution or loan to the Company except as permitted by and in accordance with Section 4(d). Except as provided in Section 4(c), no Member or Affiliate of a Member shall receive any compensation for providing any guaranty or pledge of personal assets to secure any Company debt or obligation.

(c) Certain Guarantees. Mitchell and Wellington will provide any guarantees required by the lender providing acquisition financing to the Company in connection with the purchase of the Property. In the event that any of them makes any payment upon any such guaranty (other than monthly interest payments that constitute Cost Overruns, which shall be funded pursuant to Section 4(d) and treated as Cost Overrun Loans), such payment shall not be treated as a capital contribution to the Company but shall be treated as an advance to the Company (a "**Guaranty Repayment Loan**") made by the person or persons making such payment (each such person, a **"Guaranty Payor"**) bearing interest at the same interest rate as is then in effect for the loan for which such payment is made, which Guaranty Repayment Loan shall be payable in full to such Guaranty Payor before any distributions to the Members and before any Cost Overrun Loans or Other Member Loans are repaid; provided, however, that if any such guaranty payments are made by a Guaranty Payor as a result of fraud, willful misconduct or misappropriation by Mitchell, Wellington or any entity controlled by either or both of them (the "**Wrongful Acts**"), then any such payments made by the applicable Guaranty Payor shall be treated as follows: (i) if the loan for which such guaranty payment is made is not completely repaid from such payment, then as a loan made by such Guaranty Payor bearing the same interest rate and having the same payment priority, and payable over the remaining term of such financing, as the loan for which such payments were made, and (ii) if the loan is completely repaid by such payment, then such Guaranty Payor shall be completely subrogated to the position of the lender whose loan was paid off, and such loan shall continue to be paid by the Company on the same terms and conditions and continue to be subject to any lien of mortgage and other security interests in favor of such loan. All costs incurred by the Company to the extent resulting from Wrongful Acts (expressly excluding principal and regular interest on the loan indebtedness), including but not limited to default rate interest (but only to the extent higher than the

regular interest charged on such debt) and legal fees and other costs of the lender, shall be subordinate to all distributions to the Class A Members.

(d) Member Loans. If the Company requires additional funds to pay for Property renovation or development cost overruns to include the costs, if any, of funding and development including interest and finance fees and professional fees occasioned by such finance ("**Cost Overruns**"), the Managing Member shall notify all Members and Assignees of the amount thereof and the date such amounts are required (which shall be not less than ten business days after notice thereof is delivered) and each Member and Assignee will have the right to participate in loaning its pro rata share of such funds to the Company as a "**Cost Overrun Loan.**" For this purpose, the pro rata shares of the Members shall be twenty five percent (25%) for the Managing Member and the Class A and Class B Members and Assignees shall share in the remaining seventy-five percent (75%) in accordance with their respective Company Interests. The Managing Member is obligated to fund ten percent of the Cost Overrun Loan in all events (the "**MM Base Cost Overrun Loan**") and may initially elect to fund up to its entire 25% share of such loan. If not all Class A and Class B Members and Assignees elect to fund their pro rata shares of their initial seventy-five (75%) share of the Cost Overrun Loan, the Managing Member shall permit the Class A and Class B Members and Assignees who have elected to participate in making such loan to increase the amount of their loans, in such proportions as they agree, to fund up to the entire amount remaining. The Managing Member agrees to provide all funds to pay for such cost overruns, as a Cost Overrun Loan, to the extent that the Class A and Class B Members and Assignees elect to not participate in making such loans. For the avoidance of doubt, no Members or Assignees other than the Managing Member have any obligation to participate in making Cost Overrun Loans. The MM Base Cost Overrun Loan shall not bear any interest, but all other Cost Overrun Loans shall bear interest at the rate of ten percent (10)% per annum, compound annually. If the Managing Member determines that the Company needs additional funds for any purpose connected with the Property other than funding any of the Cost Overruns and determines to seek such funds from the Members and Assignees rather than from an institutional or other third party lender ("**Other Member Loans**"), the Managing Member shall notify all Members and Assignees thereof, of the proposed interest rate on such loans and the date by which such funds are required, which shall not be less than ten business days after notice is delivered, and offer each Member and Assignee the opportunity to participate in making such loan as follows: 25% by the Managing Member and MM Assignees, pro rata in proportion to their respective MM Interests, and 75% by the Class A and Class B Members and their respective Assignees, pro rata in proportion to their respective Company Interests. To the extent that Members and Assignees elect to not participate in making such loan, the Managing Member may permit the Members and Assignees who have elected to participate in making such loan increase the amount of their loans, in such proportions as they agree, to fund up to the entire amount required. No Member or Assignee has any obligation to participate in making any Other Member Loan. Any Cost Overrun Loans and Other Member Loans will be paid after Guaranty Repayment Loans, and in accordance with the priority set forth in Sections 6(a) and 10, as applicable.

(e) No Interest on Capital; No Right to Demand Return of Capital. Except as otherwise provided herein, no Member shall receive any return or interest on any capital contribution to the Company unless such arrangement is approved in connection with the admission of a new Member in accordance with Section 4(f) hereof. No Member shall have the right to withdraw or demand a return of his or her or its contributions (or any Deemed Contribution) or the right to demand to receive property other than cash for his or her or its membership interest. Unless otherwise provided by law, no Member, shall be personally liable for the return or repayment of all or any part of any other Member's Capital Account or capital contributions (or any Deemed Contribution), it being expressly agreed that any such return of capital (or any Deemed Contribution) pursuant to this Agreement shall be made solely from the assets (which shall not include any right of contribution from a Member) of the Company.

(f) Admission of New Members. Subject to Section 12(g) hereof, the Company may admit new Members or issue any additional membership interests in the Company to any Person who is not an Affiliate of an existing Member upon terms and conditions approved by the Managing Member. The provisions of this Section 4(f) do not apply to admissions of transferees of all or any portion of membership interests as Members pursuant to Section 9 hereof.

5. **Allocations.**

(a) Taxation; Capital Accounts. It is the intention of the Members that the Company be classified as a partnership for purposes of federal and state income tax law. The Company shall establish and maintain a separate capital account (each, a "**Capital Account**") for each Member and each Assignee in accordance with Section 704 of the Internal Revenue Code of 1986, as amended (the "**Code**") and the rules set forth in Treasury Regulations §1.704-1(b)(2)(iv).

(b) Capital Account Deficit. No Member or Assignee with a deficit in his Capital Account shall be obligated to restore such deficit balance or make a capital contribution to the Company solely by reason of such deficit.

(c) Allocations of Profits and Losses. Subject to the provisions hereof, Profits and Losses for any fiscal year, or portion thereof, shall be allocated to the Members and Assignees in a manner such that the Capital Account of each Member and Assignee, immediately after making such allocation, and after taking into account actual distributions made during such fiscal year, or portion thereof, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Member or Assignee pursuant to Section 10 if the Company was dissolved, its affairs wound up and its assets sold for cash equal to their carrying value on the Company's books, all Company liabilities, including the Company's share of any liability of any entity treated as a partnership for U.S. federal income tax purposes in which the Company is a partner, were satisfied (limited with respect to each nonrecourse liability to the carrying value of the assets securing such liability) and the net assets of the Company were distributed in accordance with Section 10 to the Members and Assignees immediately after making such allocation, minus (ii) such Member's or Assignee's share of Company minimum gain and Member nonrecourse debt minimum gain determined pursuant to Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5), computed immediately prior to the hypothetical sale of assets. Adjustments shall be made in the allocations of profits and losses hereunder by the Members, upon the advice of the Company's accountants or tax counsel, to the extent advisable in order to comply with the Treasury Regulations under Code Section 704, in a manner that gives effect to the distribution rights of the Members and Assignees.

(d) Tax Matters Partner. The Managing Member shall be the "tax matters partner" for purposes of Section 6231(a)(7) of the Code.

(e) Special Allocations.

(1) Minimum Gain Chargeback. Notwithstanding any provisions to the contrary contained in this Agreement, if there is a net decrease in Company minimum gain determined in accordance with Treas. Reg. § 1.704-2(b)(2) during a taxable year, the Members must be allocated items of Company income and gain in accordance with the "minimum gain chargeback" requirement set forth in Treas. Reg. § 1.704-2(f).

(2) Member Minimum Gain Chargeback. Notwithstanding any other provisions to the contrary contained in this Agreement except Section 6(e)(1) hereof, if there is a net decrease in Member minimum gain determined in accordance with Treas. Reg. § 1.704-2(i)(2) during a

taxable year, the Members must be allocated items of Company income and gain in accordance with the "minimum gain chargeback" requirement set forth in Treas. Reg. § 1.704-2(i)(4).

(3) Qualified Income Offset. Except as otherwise provided in Sections 6(e)(1) and (2) hereof, in the event that any Member unexpectedly receives an adjustment, allocation or distribution described in subparagraph (4), (5) or (6) of Treas. Reg. § 1.704-1(b) (2) (ii) (d), profits of the Company shall be allocated to such Member in an amount and manner sufficient to satisfy the requirements of the "qualified income offset" provisions set forth in Treas. Reg. § 1.704-1(b)(2)(ii)(d).

(4) Gross Income Allocation. Except as otherwise provided in Except as otherwise provided in Sections 6(e)(1), (2) and (3) hereof, in the event any Member has a deficit capital account at the end of any Company fiscal year, each such Member shall be specially allocated items of Company income and gain in the amount of such deficit capital account as quickly as possible.

(f) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treas. Reg. § 1.704-2(i).

(g) Curative Allocations. The allocations set forth in Section 6(e) hereof (the "**Regulatory Allocations**") are intended to comply with certain requirements of Section 1.704-1(b) of the Treasury Regulations. To the extent that Regulatory Allocations are inconsistent with the manner in which the Managing Member intends to make Company distributions pursuant to this Article 6, the Managing Member is authorized to take such reasonable actions as may be required to specially allocate other profits, losses, and items of income, gain, loss, deduction or credit so as to preserve the intended economic arrangement reflected in the foregoing distribution provisions by eliminating the effect of the Regulatory Allocations.

(h) Tax Allocations under Section 704(c) of the Code. In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members so as to take into account any variations between the adjusted basis of such property for federal income tax purposes and its Gross Asset Value.

(i) Certain Additional Definitions:

"**Depreciation**" shall mean, for each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such fiscal year or other period; provided, however, that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such fiscal year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction with respect to such asset for such fiscal year or other period bears to such beginning adjusted tax basis; and provided further, that if the federal income tax depreciation, amortization or other cost recovery deduction for such fiscal year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member.

"**Fair Market Value**" shall mean with respect to any asset of the Company, the amount for which any asset could be sold in an arms length transaction by one who desires to sell, but is not under any urgent requirement to sell, to a buyer who desires to buy, but is under no urgent necessity to buy, when both have a reasonable knowledge of the facts.

"**Gross Asset Value**" shall mean, with respect to any asset, such asset's adjusted basis for federal income tax purposes, except as follows:

(a) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of such asset;

(b) the Gross Asset Value of all Company assets shall be adjusted to equal their respective Fair Market Values, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company assets as consideration for a Membership Interest; and (iii) the liquidation of the Company within the meaning of Treasury Regulation §1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clause (i) and clause (ii) of this paragraph (b) shall be made only if the Managing Member determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company; and

(c) the Gross Asset Value of any Company asset distributed to any Member shall be the gross Fair Market Value of such asset on the date of distribution. If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraph (a) or paragraph (b) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Loss of the Company.

"**Profits**" and "**Losses**" shall mean, for each fiscal year, an amount equal to the Company's taxable income or loss for such fiscal year, determined in accordance with Section 703(a) of the Code (but including in taxable income or loss, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code), with the following adjustments:

(a) any income of the Company exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Section 705(a)(2)(B) of the Code (or treated as expenditures described in Section 705(a)(2)(B) of the Code pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(c) in the event the Gross Asset Value of any Company asset is adjusted in accordance with paragraphs (b) or (c) of the definition of "Gross Asset Value" above, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) gain or loss resulting from any disposition of any asset of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value; and

(e) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period.

(f) Notwithstanding any other provision of this definition, any item which is specially allocated pursuant to Section 6(e) of the Agreement will not be taken into account in computing Profits or Losses.

(j) Elections. Except as otherwise provided in this Agreement, the Managing Member shall have the right to decide all Company tax matters, including, but not limited to, whether or not to make any available elections. However, the Managing Member shall cause the Company to make the election provided under Section 754 of the Code at the request of any Member or at the request of the estate of any deceased Member.

6. **Distributions**. No distributions shall be made to any Members or Assignees unless and until all Guaranty Repayment Loans have been paid in full.

(a) Distributions of Available Cash Flow. Subject to the limitations on distributions imposed by the Act and the terms of this Agreement, prior to the dissolution of the Company, the Company shall make distributions of Available Cash Flow to the Members and Assignees at such time as the Managing Member determines, but no less frequently than annually, as follows:

(i) first, to the Class A Members, Class A Assignees, Class B Members and Class B Assignees, pro rata, in proportion to their respective Unreturned Capital Contributions and Unreturned Deemed Contribution, until they are reduced to zero;

(ii) second, to the Managing Member, an amount equal to the Outstanding Development Fee Distribution;

(iii) third, to all Members who have made any Cost Overrun Loans (including MM Base Cost Overrun Loans) or Other Member Loans, first pro rata in proportion first to the outstanding amounts of all interest owed on each such loan, and second pro rata to the outstanding amounts of all principal owed on each such loan, to repay first all outstanding interest and second all outstanding principal of such loans, such that all such the outstanding balances of such loans are reduced to zero at the same time; and

(iv) fourth, 25% to the Managing Member and MM Assignees, pro rata in proportion to their respective MM Interests, and 75% to the Class A Members, Class A Assignees, Class B Members and Class B Assignees, pro rata in proportion to their respective Company Interests, until the Class A Members, Class A Assignees, Class B Members and Class B Assignees have received an amount pursuant to this clause (iv) equal in the aggregate to the Additional Profit Participation; and

(v) finally, any remaining Available Cash Flow, 100% to the Managing Member and MM Assignees, pro rata in proportion to their respective MM Interests.

The membership interests of the Class A Members, Class A Assignees, the Class B Members and Class B Assignees in the Company will terminate, without the necessity of any further action, upon receipt of all funds distributable to them pursuant to clauses (i) and (iv) above, and such Members and Assignees shall have no further right, title or interest in or to the Company, its distributions, Economic Rights, assets or business in that capacity. Upon the termination of such interests in accordance with the preceding sentence, at the written request of the Managing Member, the Class A Members, Class A Assignees, the Class B Members and Class B Assignees will execute and deliver to the Company an acknowledgement, in form and substance reasonably acceptable to the Managing Member, that its membership interest and/or Economic Rights in the Company has been terminated and that they have ceased to be members or

assignees of the Company and have no further right, title or interest in or to the company, its assets, distributions or business. Such written acknowledgements are solely to provide memorialized evidence of termination and are not required to effect termination of such Members' and Assignees' interests in the Company.

(b) Withholding Taxes. In the event that the Company is required to deposit or pay any tax on behalf of a Member with respect to the taxable income of the Company allocable to such Member for any calendar year, such deposit or payment shall be treated as an advance recoverable from future distributions of cash to the Member. To the extent that such advances to a Member for a calendar year exceed the cash distributable to the Member for such year, and have not been recovered from any other distributions of cash, such advances shall be repaid by the Member to the Company within 105 days of the end of the calendar year.

7. **Management.**

(a) General. Except as otherwise expressly provided in this Agreement, the full powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed solely under the direction of the Managing Member. Unless one or more specific officers of the Company or Members are specifically authorized, in writing, by the Managing Member to execute and deliver any agreements, contracts, deeds or other instruments of the Company, any and all agreements, contracts, deeds or other instruments shall be executed and delivered only by Managing Member. Except as may be specifically provided herein, no Class A or Class B Member and no permitted successor or assign of any Class A Member or Class B Member or any other Assignee shall have any rights or powers to manage the business or affairs of the Company. The Managing Member may from time to time appoint or hire one or more persons to act as officers of the Company, or otherwise to manage the Company's day-to-day affairs, who shall have such management powers and responsibilities as the Managing Member shall designate and determine in the Managing Member's sole and absolute discretion, subject, however, to the management oversight of the Managing Member, and may designate such persons as "President," "Vice-President," "Secretary" or "Treasurer" or similar titles as customarily applicable with respect to their assigned duties. Persons appointed, hired or employed as such executive officers shall have the power, duties and responsibilities customarily attaching to their titular positions, or as otherwise specified or directed by the Managing Member. The Managing Member shall determine the terms and conditions of any such employment in the Managing Member's sole and absolute discretion. The Managing Member hereby designates Mitchell as President of the Company to serve in such capacity until he shall resign such position, dies, is declared legally incompetent or becomes disabled. .

(b) Compensation; Expenses. The Managing Member shall be entitled to receive a development fee distribution equal to five percent (5%) of the hard and soft costs of the development of the Property, not to exceed $225,000 (the "**Development Fee Distribution**"). Except for the Development Fee, no Member shall be paid (or be permitted to receive) any fees or other compensation for the performance of his Company management or other responsibilities under this Agreement, the parties hereto intending that their share of distributions as Members as provided under Sections 6 and 10 hereof shall be the sole compensation therefor. However, the Managing Member shall be entitled to be reimbursed for all reasonable out-of-pocket expenses paid or incurred by it in the performance of its duties under this Agreement. Reimbursable expenses shall not, however, include any allocable overhead or share of general administrative expenses.

(c) Dealing With Affiliates. Except as expressly provided herein the Company shall not employ a Member or an Affiliate of any Member to render or perform a service for the Company, or (ii) pay or compensate a Member or Affiliate of a Member, or (iii) contract to buy property from, or sell

property to, any Member or Affiliate, or (iv) otherwise deal with any such Member or Affiliate, in each case except upon terms that are fair and equitable to the Company and no less favorable to the Company than the terms, if any, available from similarly situated qualified unrelated persons or entities. The Managing Member shall notify the other Members that it proposes to enter into an arrangement or agreement with an Affiliate of the Managing Member, with a general description of the proposed terms of such arrangement or agreement, at least ten (10) days prior to entering into the arrangement or agreement with an Affiliate of the Managing Member.

(d) Books and Records. True and correct books of account with respect to the operations of the Company shall be kept by the Company at such place as shall be designated by the Managing Member. Any Member shall have the right to examine, or have its duly authorized representative examine, the books of account of the Company at any reasonable time on reasonable advance notice during normal business hours.

(e) Banking. All funds of the Company shall be deposited in the Company's name at such banks or other financial institution and in such account or accounts in the name of the Company as shall be designated by the Managing Member. The funds in such accounts shall be used solely for the business of the Company and the purposes permitted hereunder. Withdrawals from, or checks drawn upon, such accounts shall require the signature of such person or persons as are designated by the Managing Member from time to time.

(f) Time; Other Interests. The Managing Member shall devote such time as is reasonably required to fulfill its responsibilities hereunder, provided that the Managing Member shall not be required to devote all or substantially all of its time and energies to the management or business of the Company. Each of the Members, or any of them, may engage in any other business or profession, and in any other business venture of any nature or description, independently or with others, including, without limitation, the real estate business, including management and operation apartment houses and condominiums, and neither the Company nor the Members shall have any rights in and to such independent venture or the income or profits derived therefrom. No Member shall be under any duty in respect of any other such business venture to disclose such business venture to the Members or to invite participation in such other business ventures by the Members or the Company.

(g) Limitations on Power of Members. Except as expressly authorized by this Agreement, no Member shall, directly or indirectly, in his, her or its capacity as a Member, (i) withdraw from the Company or require the Company to purchase his membership interest, (ii) dissolve, terminate or liquidate the Company, (iii) petition a court for the dissolution, termination or liquidation of the Company, or (iv) cause any property of the Company to be subject to the authority of any court, trustee or receiver (including suits for partition and bankruptcy, insolvency and similar proceedings).

(h) No Annual Meeting Required. The Company may, but is under no obligation to, hold any annual meeting of Members.

(i) Right of Third Parties to Rely on Authority. No person dealing with the Managing Member shall be required to determine the Managing Member's authority to make any undertaking on behalf of the Company, or to determine any fact or circumstance bearing upon the existence of the Managing Member's authority. Every contract, agreement, lease, promissory note, deed, mortgage or other instrument or document (collectively, "Documents") executed by the Managing Member shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that:

(i) at the time of the execution or delivery of the Document, the Company was in existence and this Agreement was in full force and effect;

(ii) the Document was duly authorized and approved by the Members or the Members in accordance with this Agreement and is binding upon the Company; and

(iii) the Managing Member was duly authorized and empowered to execute and deliver the Document for and on behalf of the Company.

(j) Replacement of Management Authority. Upon the death, retirement, disability or declaration of incompetence of Mitchell, then Wellington, Alexander Mitchell and Randolph Amengual will become the co-managers of the Managing Member and the Co-Presidents of the Company and all actions taken by them in such capacities shall require approval of at least two of them in order to be effective. Replacement of Mitchell or Wellington, Alexander Mitchell and Randolph Amengual under any other circumstances or conditions will require the prior approval of all Class A Members. The Managing Member represents and warrants that the operating agreement of the Managing Member shall conform to the requirements of this Section 7(j). For the avoidance of doubt, neither Alexander Mitchell nor Randolph Amengual have any obligation to contribute or fund any amounts to the Managing Member or to the Company by reason of their positions as co-managers of the Managing Member and Co-Presidents of the Company.

(k) Reports and Information to Members. The Company shall prepare and make good faith efforts to distribute to the Members within 100 days after the end of each calendar year, the information necessary to enable the Members to complete their federal and state income tax returns for such fiscal year. Within thirty (30) days after the end of each of the first three calendar quarters of each year during the term of this Agreement, the Managing Member shall cause the Company to distribute unaudited quarterly financial statements of the Company to each Member, and within forty five (45) days after the end of each calendar year during the term of this Agreement, the Managing Member shall cause the Company to distribute annual financial statements of the Company to each Member, in such form (audited or unaudited) as they are obtained or maintained by the Managing Member. The Managing Member will provide monthly reports of sales and marketing efforts. In addition, upon written request by any Member, the Managing Member will provide to a requesting Member, but no more frequently than quarterly, and to the extent that such information is in its possession and/or readily available, information or reports related to the status of development of the Property, the status of funding or financing of the Company, rentals, income and expense statements and other material events or prospects. At the request of any Class A Member, the Managing Member will meet with Class A Members from time to time upon their request, at a mutually acceptable time, to discuss the business or affairs of the Company; provided, however the Managing Member shall not be obligated to do so more than four times in any twelve-month period.

8. **Liability; Indemnification.**

(a) No Personal Liability to Third Parties. Except to the extent required by the Act or other applicable law or as expressly provided in this Agreement, as amended from time to time, all debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member shall have any personal liability for any such debt, obligation or liability of the Company solely by reason of being a Member or exercising management authority as a Member.

(b) Indemnification. To the fullest extent permitted by the Act, the Company hereby agrees to indemnify and save each Member from and against any and all claims, liabilities, damages,

losses, costs and expenses, including, without limitation, (i) amounts paid in satisfaction of judgments, in compromises and settlements, or as fines and penalties and (ii) reasonable counsel fees or other costs and expenses of investigating or defending against any claim or alleged claim by a third party, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Member by reason of any act performed or omitted to be performed by any Member in connection with the business of the Company, excluding claims, liabilities, or damages, losses, costs or expenses with respect to claims between Members or between Members and the Company; provided, however, that indemnification under this Section 8(b) shall be available only if (i) the Member acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company, (ii) the action (or inaction) of the Member did not constitute fraud, gross negligence, willful misconduct or a breach of fiduciary duty by such Member and (iii) with respect to any criminal action or proceeding, the Member had no reason to believe that his conduct was unlawful. The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere shall not, of itself, create a presumption that the Member's conduct constituted fraud, gross negligence, willful misconduct or a breach of fiduciary duty. The satisfaction of any indemnification and any saving harmless pursuant to this Section 8(b) shall be limited to Company assets and no Member shall be personally liable on account thereof.

9. **Assignment.**

(a) General. Except as specifically provided in Section 9(b) but subject to Section 9(c), (i) no Member may Transfer all or any portion of his membership interest in the Company (including but not limited to a transfer of a merely Economic Rights in the Company), (ii) no Principal of a Member or Assignee that is an entity may Transfer all or any portion of his, her or its interest in the Member or Assignee, and (iii) no Transferee may be admitted as a member of the Company, in each case without the prior written approval of the Managing Member, not to be unreasonably withheld or conditioned, and unless and until such Transferee executes an agreement in form and substance approved by the Managing Member to be bound by the terms of this Agreement.

(b) Certain Permitted Transfers. Notwithstanding Section 9(a), the Company will recognize and respect as valid any Transfer by a Member or Assignee or Principal of a Member or Assignee that is made (i) to another Member or Affiliate of another Member, (ii) to a Member's, Assignee's or Principal's Family Member or any Affiliate of any of the foregoing, or (iii) to a Member's, Assignee's or Principal's estate upon such Person's death, and (iv) to any Family Member pursuant to a deceased Member's, Assignee's or Principal's last will and testament or by applicable law of intestate succession; provided, however, that in each of the foregoing cases (other than the Transfer to an estate upon death), the Transferee or Transferor provides a copy of the executed instrument of Transfer to the Company. Such Transfers will effect a transfer of all rights associated with the transferred interest, and the Transferee will admitted as a member of the Company (of the same class of interest), so long as the Transferee execute an agreement in form and substance approved by the Managing Member in its reasonable discretion to be bound by the terms of this Agreement within 60 days following the Transfer failing which, such Transferee will be treated as an Assignee and not a Member hereunder until such Transferee executes and delivers such required agreement.

(c) Limitations. Notwithstanding anything in this Section 9 to the contrary, (i) no Member, Assignee or Principal of a Member or Assignee shall transfer his, her or its interest in the Company except in compliance with the requirements, if any, of any loan documents of the Company in respect of a loan then outstanding to BRT Realty Trust or its assignees, and (ii) as a condition to the assignment of any Economic Rights to an Assignee hereunder, an Assignee shall be subject to the provisions of Article 9 of this Agreement regardless of whether or not the Assignee is a party to this Agreement, and the Company shall have no obligation to recognize or respect any Transfer of all or any portion of the interest of an Assignee unless made in compliance with the requirements of this Section 9.

Members and Assignees that are entities shall implement restrictions in their organizational documents to insure compliance with the requirements of this Section 9.

10. **Liquidation.** Following dissolution of the Company in accordance with Section 2 above, the Company's business shall be wound up and the Company liquidated, in a manner designed to realize the fair value of the Company's assets. The proceeds of the liquidation shall be distributed in the following manner:

(a) first, to the payments of the expenses of liquidation;

(b) second, to pay the debts and obligations of the Company, including any outstanding Guaranty Repayment Loan and other debts owing to Members and Affiliates, but excluding Cost Overrun Loans, Other Member Loans and the Outstanding Development Fee;

(c) third, to the establishment of any reserves which the Managing Member shall deem reasonably necessary for contingent or unforeseen liabilities;

(d) fourth, entirely to the Class A Members and Class A Assignees, in an amount equal to their Unreturned Capital Contributions, pro rata in proportion to the respective amounts thereof, until they are reduced to zero;

(e) fifth, entirely to the Class B Members and Class B Assignees, in an amount equal to their Unreturned Deemed Contributions, pro rata in proportion to the respective amounts thereof, until they are reduced to zero;

(f) sixth, to all Members who have made any Cost Overrun Loans (including MM Base Cost Overrun Loans) or Other Member Loans, first pro rata in proportion first to the outstanding amounts of all interest owed on each such loan, and second pro rata to the outstanding amounts of all principal owed on each such loan, to repay first all outstanding interest and second all outstanding principal of such loans, such that all such the outstanding balances of such loans are reduced to zero at the same time;

(g) seventh, 25% to the Managing Member and MM Assignees, pro rata in proportion to their respective MM Interests, and 75% to the Class A Members, Class A Assignees, Class B Members and Class B Assignees, pro rata in proportion to their respective Company Interests, until the Class A Members, Class A Assignees, Class B Members and Class B Assignees have received an amount pursuant to Section 6(a)(iv) and this Section 10(g) equal in the aggregate to the Additional Profit Participation;

(h) eighth and to the Managing Member, an amount equal to the Outstanding Development Fee Distribution;

(i) finally, any remains sums, 100% to the Managing Member and the MM Assignees, pro rata in proportion to their respective MM Interests.

11. [INTENTIONALLY LEFT BLANK.]

12. **Miscellaneous**.

(a) Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the state of New York, excluding its rules applicable to conflict-of-laws.

(b) Notices. All notices, demands, offers or other communications required or permitted by this Agreement shall be in writing and shall be sent by prepaid registered or certified mail, return receipt requested overnight delivery service, or by hand delivery, and addressed to the other party hereto at such party's address set forth in Exhibit A (as the same shall be amended from time to time), and shall be deemed given upon the date the return receipt is signed on behalf of the receiving party or, if hand delivered, upon delivery. Notices may be delivered by an attorney for the party providing notice. Copies of any notices hereunder to Marylebone Investments, LLC or to Louis Perlman shall also be provided to Jeffrey Moerdler, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P[redacted], 666 Third Avenue, New York, NY 10017.

(c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Members and their respective successors and permitted assigns.

(d) Severability. If any provision of this Agreement shall be determined to be unlawful or unenforceable to any extent, such provision shall be deemed to be severed from this Agreement and every other provision of this Agreement shall remain in force and effect.

(e) No Waiver. The waiver by any Member of any matter provided herein shall be effective only if made in writing and signed by such Member.

(f) Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Members and supersedes all prior agreements or understanding, whether oral or written, between the parties with respect to the subject matter of this Agreement.

(g) Amendments. This Agreement and the Company's Articles of Organization may be amended only upon prior written authorization thereof by the Managing Member and a Majority-in-Interest of the Class A Members; provided, however that (i) no amendment may be made to this Agreement which (A) results in the subordination or dilution of the distributions to the Class A Members and Class A Assignees or Class B Members and Class B Assignees provided under this Agreement (excluding effects on individual Class A or Class B Members or Class A or Class B Assignees that result from Transfers of their interests pursuant to Section 9 hereof, and also excluding amendments required to comply with the Treasury Regulations governing allocations of profits, losses or items of income, gain, loss or expense), without the prior written consent of all Members; (ii) no amendment may be made to this Agreement which eliminates or materially reduces any rights that the Class A Members have under this Agreement, without the prior written consent of a Supermajority-in-Interest of the Class A Members; and (iii) no amendment may obligate a Member to make a capital contribution or loan funds to the Company, or to guaranty any Company debt or indemnify any Company creditor, without the prior written consent of such Member. Notwithstanding the foregoing, the provisions of Section 7(j) shall not be amended without the prior written consent of all Class A Members.

(h) Counterparts. This Agreement may be executed and delivered in one or more counterparts and by facsimile or electronically in portable document format, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Managing Member:
AdvanceStar LLC

By: _____
David J. Mitchell, Manager

Class A Members:

_____
David J. Mitchell

_____
Kerry Wellington

and others as set forth in Signature Addenda hereto

Class B Member:
Ryder Madison LLC

By: _____
Name:
Title:

The undersigned execute this Agreement for the purpose of agreeing to be bound by Section 4(c) hereof.

_____
David J. Mitchell

_____
Kerry Wellington

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Managing Member:
AdvanceStar LLC

By: _____
David J. Mitchell, Manager

Class A Members:

_____
David J. Mitchell

_____
Kerry Wellington

and others as set forth in Signature Addenda hereto

Class B Member:
Ryder Madison LLC

By: _____
Name:
Title:

The undersigned execute this Agreement for the purpose of agreeing to be bound by Section 4(c) hereof.

_____
David J. Mitchell

_____
Kerry Wellington