Exhibit A

EXECUTION VERSION

SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

JDS 340 FLATBUSH LLC

(a Delaware limited liability company)

Dated as of April 22, 2019

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JDS 340 FLATBUSH LLC

This SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT (this "Agreement") of JDS 340 FLATBUSH LLC, a Delaware limited liability company (the "Company"), is made, entered into and effective as of April 22, 2019, by and between Ackerman 9 Dekalb Avenue LLC, a Delaware limited liability company (together with its permitted successors and assigns "Ariel"), and 340 Flatbush Sponsor LLC, a Delaware limited liability company (together with its permitted successors and assigns "JDS").

RECITALS

WHEREAS, the Company was formed pursuant to the provisions of the Delaware Limited Liability Company Act, Delaware Code, Title 6, Sections 18-101, et seq., as amended from time to time (the "Act"), pursuant to that certain Certificate of Formation of the Company, dated February 21, 2014, filed in the office of the Secretary of State of Delaware (the "Secretary of State") on February 21, 2014 (the "Certificate of Formation");

WHEREAS, JDS and Ariel are parties to that that certain Amended and Restated Limited Liability Company Agreement of the Company dated June 3, 2016 (the "Existing Agreement");

WHEREAS, JDS and Ariel are the sole members of the Company and desire to amend and restate the Existing Agreement as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and the promises contained herein (the receipt and sufficiency of which being hereby acknowledged), the parties hereto, intending to be legally bound, do hereby agree that the Existing Agreement is hereby amended and restated in its entirety as follows:

ARTICLE 1
DEFINITIONS AND TERMS

1.1 **Definitions**. Unless the context otherwise requires, the following terms shall have the following meanings for the purposes of this Agreement:

"Act" has the meaning ascribed thereto in the Recitals to this Agreement.

"Additional Capital Contributions" has the meaning ascribed thereto in Section 3.3.

"Adjusted Capital Account Deficit" means, with respect to any Member for any period, the deficit balance, if any, in such Member's Capital Account as of the end of such period, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts that such Member is deemed obligated to restore as described in the penultimate sentence of Treasury Regulation Section 1.704-2(g)(1) and in Treasury Regulation Section 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistent therewith.

"Affiliate" means, with respect to a specified Person, (a) a Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person, (b) any Person that is an officer, director, partner, manager or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner, manager or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person that, directly or indirectly, is the beneficial owner of more than ten percent (10%) of any class of equity securities of, or otherwise has a substantial beneficial interest in, the specified Person or of which the specified Person has a substantial beneficial interest, or (d) the spouse, issue or parent of the specified Person. Notwithstanding the foregoing, an Affiliate does not include a Person that is a partner, member or shareholder in a partnership, joint venture, limited liability company or corporation with the Company or any Member if such Person is not otherwise an Affiliate of the Company or such Member.

"Agreement" means this Amended and Restated Limited Liability Company Operating Agreement and all Exhibits referred to herein and attached hereto, each of which is made a part hereof, as amended, supplemented or otherwise modified from time to time. Words such as "herein", "hereinafter", "hereto", "hereby" and "hereunder", when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

"Approved Accountants" has the meaning ascribed thereto in Section 9.2.

"Approved Budget" has the meaning ascribed thereto in Section 6.12.

"Ariel" has the meaning ascribed thereto in the introductory paragraph of this Agreement.

"Ariel At-Fault Guaranty Payment" means a Guaranty Payment resulting solely from the fraudulent acts, gross negligence, willful misconduct or bad faith of Ariel or any act taken outside of the scope of authority granted or reserved to Ariel under this Agreement.

"Ariel Guarantor" means the Ariel Principal.

"Ariel Principal" means Ariel Ackerman.

"Authorized Representatives" means, with respect to Managing Member, Michael Stern (and any other individual, who may be added by written notice to Ariel) and, with respect to Ariel, Ariel Ackerman (and any other individual, who may be added by written notice to Managing Member).

"Available Cash" means, all cash held by the Company, other than Capital Contributions, that is available for distribution to the Members after taking into account any Reserves, the repayments of all Company Loans and all accrued interest thereon, and excluding any Promote Distributions or Fees.

"Bankruptcy Act" means the United States Bankruptcy Reform Act of 1978, as amended, or any successor bankruptcy statute, and the rules promulgated thereunder.

"Bankruptcy Action" means, with respect to any Person, (a) the commencement by such Person of any case, action or proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors, (b) the institution of any proceedings by such Person to have the Company or Managing Member adjudicated as bankrupt or insolvent, (c) the consent, collusion, acquiescence or joining in by such Person to the institution of bankruptcy or insolvency proceedings against such Person, (d) the filing by such Person of a petition, or consent by such Person to a petition, seeking reorganization, arrangement, adjustment, winding up, dissolution, composition, liquidation or other relief or other action by or on behalf of such Person under the Bankruptcy Act or any other existing or future law of any jurisdiction on behalf of such Person under the Bankruptcy Act or any other federal or state law relating to bankruptcy, (e) the seeking or consenting by such Person to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such Person or for all or substantially all of such Person's assets, (f) the making by such Person of an assignment for the benefit of the creditors of such Person, or (g) the taking by such Person of any action in furtherance of any of the foregoing. The foregoing definition of "Bankruptcy Action" is intended to replace and shall supersede and replace Sections 17-402(a)(4) and (5) of the Act.

"Book Basis" means, with respect to any asset, other than cash, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) the initial Book Basis of any asset contributed (or deemed contributed) to the Company shall be such asset's gross fair market value at the time of such contribution as reasonably determined by the Managing Member;

(b) the Book Basis of all Company assets may be adjusted in the discretion of the Managing Member to equal their respective gross fair market values, as reasonably determined by the Managing Member, at the times specified in Treasury Regulations Section 1.704-1(b)(2)(iv)(f);

(c) any adjustments to the adjusted basis of any asset of the Company pursuant to Section 734 or Section 743 of the Code shall be taken into account in determining such asset's Book Basis in a manner consistent with Treasury Regulations Section 1.704-1(b)(2)(iv)(m);

(d) the Book Basis of any Company asset distributed or deemed distributed by the Company to any Member shall be adjusted immediately prior to such distribution to equal its gross fair market value as of the date of distribution, as reasonably determined by the Managing Member; and

(e) if the Book Basis of an asset has been determined pursuant to clause (i), (ii) or (iii) of this definition, such Book Basis shall thereafter be adjusted in the same manner as would the asset's adjusted basis for federal income tax purposes, except that depreciation deductions shall be computed based on the asset's Book Basis as so determined, rather than on its adjusted tax basis.

"Business Day" means any day other than a Saturday, Sunday or other day on which national banks in New York, New York are not open for business.

"Business of the Company" means the purpose of the Company as described in Section 2.6.

"Capital Account" means the separate account maintained for each Member under Section 4.1 hereof.

"Capital Contribution" means the amount of cash and the agreed fair market value (net of liabilities) of any non-cash property initially contributed to the Company by a Member and any subsequent contributions of cash and the agreed fair market value (net of liabilities that the Company is considered to assume or take subject to under Code Section 752) of any other property subsequently contributed to the Company by a Member as permitted by this Agreement.

"Certificate of Formation" has the meaning ascribed thereto in the Recitals to this Agreement, as the same may be amended from time to time with the prior written consent of Ariel or as required by the Act.

"Code" means the Internal Revenue Code of 1986, as amended (or any corresponding provision or provisions of any succeeding law).

"Company" has the meaning ascribed thereto in the introductory paragraph of this Agreement.

"Company Loan" has the meaning ascribed thereto in Section 3.4.

"Company Minimum Gain" means "partnership minimum gain" as defined in Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d)(1).

"Company Property" means any assets of the Company, whether tangible or intangible, or any portion thereof.

"Confidential Information" has the meaning ascribed thereto in Section 13.18.

"Contributing Member" has the meaning ascribed thereto in Section 3.4.

"Control" (and the correlative terms "controlled by", "controlling" and "under common control with") of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the day-to-day management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

"Default Amount" has the meaning ascribed thereto in Section 3.4.

"Defaulting Member" has the meaning ascribed thereto in Section 3.4.

"Developer" means 9 DeKalb Developer LLC, a Delaware limited liability company.

"Development Management Agreement" means that certain Development Management Agreement, dated on or about the date hereof, by and between Property Owner and Developer.

"Dilution Percentage" means one hundred fifty percent (150%).

"Dissolution" means (a) when used with reference to the Company, the earlier to occur of the events described in Section 10.1 and (b) when used with reference to any Member, the earlier to occur of the date upon which (i) there is a Dissolution of the Company and (ii) such Member's entire interest in the Company is terminated by means of a distribution or series of distributions by the Company to such Member.

"Distribution Date" means to the extent Available Cash is available for distribution, the 1st day of each calendar quarter (or, if such day is not a Business Day, the immediately preceding Business Day).

"Effective Date" means the date of execution of this Agreement by the parties hereto.

"Embargoed Person" or "Embargoed Persons" has the meaning ascribed thereto in Section 13.11.

"Emergency Expenditures" means payments required to be made by the Company or any Subsidiary (a) to avoid (i) the loss or impairment of life or personal injury, (ii) damage to the Property (iii) any impairment of the security given for the Loan, including payments for utilities, real estate taxes and insurance premiums, (iv) any reasonably foreseeable default under a Loan (other than a default (x) in the payment of principal (whether at maturity or upon acceleration) or (y) on account of At-Fault Liability of Managing Member) or (b) without limiting the generality of the preceding clause (a), to make any repairs or capital improvements or take other action required to effect compliance with all laws, orders, rules, regulations and other requirements enacted, imposed or enforced by any Governmental Authority.

"Existing Agreement" has the meaning ascribed thereto in the Recitals of this Agreement.

"Family Member" means, (i) with respect to an individual such individual's present spouse, ex-spouse, the lineal descendants (including natural and adopted and step children) of the individual and/or his or her spouse, and the parents, brothers and sisters of any individual (whether adopted, natural or step), as well as inter-vivos trusts for the benefit of any of the foregoing, or other entity Controlled by them, and (ii) with respect to an estate, the personal

representative or any beneficiary thereof who was a spouse, brother or sister (whether whole or half blood), lineal ancestor or descendant of the deceased (or the deceased's spouse) or a trustee or custodian for the benefit of any of them.

"Fees" means the fees (excluding reimbursements for expenses and Promote Distributions) payable to JDS or its Affiliate by the Company or Subsidiaries.

"Fiscal Year" means the taxable year of the Company, which shall begin on January 1 and end on December 31, or such other taxable year as required by Section 706(b) of the Code.

"GAAP" means United States generally accepted accounting principles, consistently applied.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guarantor" means JDS Guarantor.

"Guaranties" means any recourse or indemnity required by Lender from Guarantor.

"Guaranty Payment" has the meaning ascribed thereto in Section 7.4.

"Indemnitee" has the meaning ascribed thereto in Section 11.1.

"Initial Capital Contributions" has the meaning ascribed thereto in Section 3.2.1.

"Interest" of any Member means the entire limited liability company interest of such Member in the Company, which includes, without limitation, any and all rights, powers and benefits accorded a Member under this Agreement and the duties and obligations of such Member hereunder.

"JDS" has the meaning ascribed thereto in the opening paragraph of this Agreement.

"JDS At-Fault Guaranty Payment" means a Guaranty Payment resulting solely from the fraudulent acts, gross negligence, willful misconduct or bad faith of Managing Member.

"JDS Guarantor" means Michael Stern.

"Joint Venture Subsidiary" has the meaning ascribed thereto in Section 2.7.

"Lender" has the meaning ascribed thereto in Section 7.4.

"Loan" has the meaning ascribed thereto in Section 7.4.

"Loan Documents" means any loan agreement, promissory note or other evidence of indebtedness and all mortgages and security agreements, assignments, financing statements, pledges and collateral security agreements delivered in connection with the Loan, and any

replacement, renewal, extension, substitution, addition, supplement, amendment or modification of any of the foregoing entered into in accordance with the terms of this Agreement.

"Loan Event of Default" means any "event of default" beyond applicable notice and cure periods by the Company, any Subsidiary and/or Guarantor of any term, covenant or condition arising under the Loan Documents.

"LP" means any Person that is a third-party that enters into a Joint Venture Subsidiary with a Subsidiary of the Company.

"LP Agreement" means the operating agreement of a Joint Venture Subsidiary by and between the Company or a Subsidiary and an LP.

"Major Decision" has the meaning ascribed thereto in Section 6.3.

"Managing Member" means JDS. The Managing Member is hereby designated as a "manager" of the Company within the meaning of Section 18-101(10) of the Act.

"Member Loan" has the meaning ascribed thereto in Section 3.4.

"Member Loan Rate" means interest at the rate which is the lesser of (x) twenty percent (20%) per annum, compounded quarterly, and (y) the maximum interest rate under applicable laws.

"Member Nonrecourse Debt" means "partner nonrecourse debt," as defined in Treasury Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a nonrecourse liability of the Company, determined in accordance with Treasury Regulations Sections 1.704-2(i)(2) and (3).

"Member Nonrecourse Deductions" means "partner nonrecourse deductions," as defined in Treasury Regulations Section 1.704-2(i)(2).

"Members" means, collectively, Managing Member and Ariel, and any other Person who or which holds an Interest and is admitted as a member of the Company in accordance with this Agreement. Reference to a "Member" shall be to any one of the Members.

"Net Profits" and "Net Losses" means, for any period, the taxable income or loss, respectively, of the Company for such period, in each case as determined for U.S. federal income tax purposes, but computed with the following adjustments:

(i) items of income, gain, loss and deduction (including, without limitation, gain or loss on the disposition of any Company asset and depreciation or other cost recovery deduction or expense) shall be computed based upon the Book Basis of the Company's assets rather than upon such assets' adjusted bases for U.S. federal income tax purposes;

(ii) any tax-exempt income received by the Company shall be deemed for these purposes only to be an item of gross income;

(iii) any expenditure of the Company described in Section 705(a)(2)(B) of the Code (or treated as described therein pursuant to Treasury Regulations under Section 704(b) of the Code) shall be treated as a deductible expense;

(iv) there shall be taken into account any separately stated items under Section 702(a) of the Code;

(v) if the Book Basis of any Company asset is adjusted pursuant to clauses (b), (c) or (d) of the definition thereof, the amount of such adjustment shall be taken into account in the period of adjustment as gain or loss from the disposition or deemed disposition of such asset for purposes of computing Net Profits and Net Losses; and

items of income, gain, loss, or deduction or credit allocated pursuant to Section 4.3 shall not be taken into account.

"Non-Discretionary Expenditures" means (i) real estate taxes imposed on the Property, (ii) Emergency Expenditures, (iii) utility charges, (iv) any insurance premiums for the Company Property (v) any fees or amounts required to be paid pursuant to the Loan Documents (other than with respect to default interest or principal repayment following a Loan Event of Default under such Loan Documents), and (vi) any amount payable under any reciprocal easement agreements to which the Company or a Subsidiary is bound.

"Nonrecourse Deductions" has the meaning ascribed thereto in Treasury Regulations Section 1.704-2(b)(1).

"Notices" has the meaning ascribed thereto in Section 13.4.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Percentage Interest" means, as to any Member, as of any date, the fraction expressed as a percentage, (a) the numerator of which is the aggregate amount of such Member's Capital Contributions as of such date, and (b) the denominator of which is the aggregate amount of Capital Contributions of all Members as of such date, as the same may be adjusted in accordance with the express terms of this Agreement.

"Period of Duration" has the meaning ascribed thereto in Section 2.5.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, unincorporated organization, governmental or regulatory body or other entity.

"Promote Distributions" means any "promote" or "carried interest" distributable under an LP Agreement, which constitutes a payment to the Company or its Wholly Owned Subsidiary in

an amount disproportionate to the Company's or such Wholly Owned Subsidiary's interest in the applicable Joint Venture Subsidiary.

"Promote Percentages" means, with respect to each Member, such Member's then Percentage Interest.

"Property" means, collectively, the real property located at 340-366 Flatbush Avenue Extension in Brooklyn, New York and 9-31 DeKalb Avenue in Brooklyn, New York including, without limitation, all buildings and improvements now or hereafter located thereon and any development rights associated therewith.

"Property Owner" means the Subsidiary that owns or which is intended to own the Property.

"Regulatory Allocations" has the meaning set forth in Section 4.3.6 hereof.

"Regulations" means the federal income tax regulations promulgated by the Treasury Department under the Code, as such regulations may be amended from time to time. All references herein to a specific section of the Regulations shall be deemed also to refer to any corresponding provisions of succeeding Regulations.

"Reserves" means funds set aside by the Company pursuant to Managing Member's reasonable discretion.

"Revenue" means all actual cash receipts of the Company and/or any Subsidiary (without duplication) in respect of the Property or otherwise, including, without limitation, funds in any Reserves that have been liquidated.

"Secretary of State" has the meaning ascribed thereto in the Recitals of this Agreement.

"Subsidiary" has the meaning ascribed thereto in Section 2.7.

"Substantial Completion Date" means, the later to occur of (i) the first date on which the only items of development of the Property pursuant to the development budget for the Property remaining to be performed are minor or insubstantial details of construction, mechanical adjustment or decoration, the completion of which does not materially interfere with the proposed use of the Property and the Completion Evidence (as defined in the Development Management Agreement) with respect thereto has been delivered and (ii) Substantial Completion (as defined in the Loan Documents).

"Taxing Authority" has the meaning ascribed thereto in Section 5.3.1.

"Tender Date" has the meaning ascribed thereto in Section 3.4.

"Transaction Documents" means this Agreement.

"Transfer" has the meaning ascribed thereto in Section 8.1. The terms "Transferee", "Transferor" or "Transferred" shall have the meanings correlative thereto.

"Treasury Regulation" or "Regulation" means, with respect to any referenced provision, such provision of the regulations of the United States Department of the Treasury.

"Voting Stock" means capital stock issued by a corporation, partnership interests issued by a partnership, limited liability company interests issued by a limited liability company or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

"Wholly Owned Subsidiary" shall have the meaning ascribed thereto in Section 2.7.

ARTICLE 2
THE COMPANY AND ITS BUSINESS

2.1 **Formation of Company**. The Company was formed pursuant to the provisions of the Act by the execution, delivery and filing of the Certificate of Formation with the Secretary of State in accordance with and pursuant to the Act. Managing Member hereby confirms the formation of the Company as a limited liability company pursuant to the Act. This Agreement shall constitute the limited liability company agreement of the Company. Managing Member shall take such other actions as may from time to time be necessary or appropriate under the laws of the State of Delaware with respect to the formation, operation and continued good standing of the Company as a limited liability company. The rights and liabilities of the Members, the management of the affairs of the Company and the conduct of its business shall be as provided in the Act, except as herein otherwise expressly provided.

2.2 **Name**. The name of the Company is "JDS 340 Flatbush LLC". The Members shall operate the Business of the Company under such name or use such other or additional names as the Members may deem necessary or desirable, provided that: (a) no such name shall contain the individual name of any principal of any Member, or any similar name or variation thereof, (b) Managing Member shall have reasonably determined, before use of any such name, that the Company is entitled to use such name and will not by reason of such use infringe upon any rights of any other Person or violate any applicable laws or governmental regulations, (c) Managing Member shall register such name under assumed or fictitious name law (or equivalent thereof) in the state in which the Property is located, and (d) Ariel shall have reasonably approved such name.

2.3 **Principal Office**. The Company shall maintain its principal place of business c/o JDS Development Group, 104 Fifth Avenue, 9th Floor, New York, New York 10011, or at such other place in New York as Managing Member may determine from time to time, subject to the prior reasonable approval of Ariel.

2.4 **Registered Office and Registered Agent**. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware are Corporate Creations Network Inc. located at 3411 Silverside Road, Suite 104, in the City of Wilmington, State of Delaware, County of New Castle 19810. The registered office and registered agent may be changed from time to time by filing the address of the new registered

office and/or the name of the new registered agent with the Secretary of State pursuant to the Act.

2.5 **Period of Duration**. The period of duration of the Company (the "Period of Duration") commenced on the date of the filing of the Certificate of Formation with the Secretary of State and shall continue in perpetuity, unless the Company is dissolved sooner in accordance with the provisions of this Agreement.

2.6 **Business and Purpose of the Company**. The business purpose of the Company (the "Business of the Company") is limited solely to engaging in the following activities:

2.6.1 acquiring, owning, selling, financing, transferring and exchanging the Property and any direct and indirect interests in the Subsidiaries, if any;

2.6.2 acting as direct or indirect member of Property Owner and each Subsidiary and exercising the rights and performing the obligations of each such member;

2.6.3 causing Property Owner either directly or indirectly to acquire, own, hold, lease, operate, develop, improve, renovate, rehabilitate, manage, sell, market, finance, refinance and/or transfer any portion of the Property, subject in all instances to the Loan Documents;

2.6.4 transacting any and all lawful business for which a limited liability company may be organized under the Act that is incident, necessary or appropriate to accomplish the foregoing business purposes, including, without limitation, contracting for necessary or desirable services of professionals and others all in accordance with this Agreement including without limitation Section 6.3 hereof; and

2.7 **Subsidiaries**. The Company owns, or may hereafter form, cause to be formed, or otherwise invest in subsidiary entities (a) wholly-owned either directly or indirectly by the Company (each a "Wholly Owned Subsidiary" and, collectively, the "Wholly Owned Subsidiaries"), and (b) partially owned either directly or indirectly by the Company, including, without limitation, DeKalb MM LLC ("Dekalb MM"), 340 Flatbush Partners LLC, 340 Flatbush Partners Member LLC, 9 DeKalb Holdings 2 LLC, 9 DeKalb Holdings 1 LLC, 9 DeKalb Fee Owner LLC, and any other subsidiary formed to joint venture with a LP for the development of the Property (each a "Joint Venture Subsidiary" and, collectively, the "Joint Venture Subsidiaries" and together with any Wholly Owned Subsidiary, each a "Subsidiary" and, collectively, the "Subsidiaries"). With respect to Wholly Owned Subsidiaries, Managing Member shall perform, with no additional compensation, the same or substantially identical services for each such Wholly Owned Subsidiary as the Managing Member performs for the Company and shall have the same rights and obligations with respect to such Wholly Owned Subsidiaries as Managing Member has hereunder subject to (i) the terms of the governing documents of such Wholly Owned Subsidiary, (ii) the rights of Ariel to consent to any Major Decisions and (iii) any express provisions hereof which require the consent or approval of the Members which are not otherwise Major Decisions. With respect to Joint Venture Subsidiaries, Managing Member shall act and make decisions on behalf of any Wholly Owned Subsidiary that

holds a direct or indirect interest in such Joint Venture Subsidiary with no additional compensation subject to (a) the terms of the governing documents of such Joint Venture Subsidiary, (b) the rights of Ariel to consent to any Major Decisions and (c) any express provisions hereof which require the consent or approval of the Members which are not otherwise Major Decisions.

ARTICLE 3
MEMBERS AND CAPITAL CONTRIBUTIONS

3.1 **Names and Addresses of Members**. The addresses of the Members are:

3.1.1 Managing Member: 340 Flatbush Sponsor LLC c/o JDS Development Group, 104 Fifth Avenue, New York, New York 10011.

3.1.2 Ariel: Ackerman 9 Dekalb Avenue LLC c/o Ackerman Management & Development LLC, 1153 Broadway, 3rd Floor, New York, New York 10001.

3.2 **Initial Capital Contributions**.

3.2.1 As of the date of the Existing Agreement, the Members have made, or are deemed to have made, initial Capital Contributions ("Initial Capital Contributions") in the amounts set forth on Exhibit D attached hereto.

3.3 **Additional Contributions**. The Managing Member, and not any other Member, may call for additional Capital Contributions ("Additional Capital Contributions") of cash, on not less than fifteen (15) days prior written notice to the Members, or such shorter notice as may be reasonable under the circumstances or required to comply with any terms of the Loan Documents or LP Agreement, for (i) any amounts required to satisfy any obligation or exercise any right of the Company or a Subsidiary under any LP Agreement or any agreement entered into pursuant to an LP Agreement or as permitted hereunder, (ii) Non-Discretionary Expenditures, (iii) Emergency Expenditures, and (iv) such other reasons as determined by Manager in its reasonable business judgment. The Members shall fund all Additional Capital Contributions in accordance with their respective Percentage Interests on the date requested by Managing Member pursuant to the previous sentence; provided, that the Managing Members shall be permitted to fund additional amounts to the Company prior to making a call for Additional Capital Contributions in Managing Member's reasonable discretion.

3.4 **Company Loans, Member Loans and Dilution**. If a Member (a "Defaulting Member") fails to deliver to the Company its share of an Additional Capital Contribution (or any amounts owed under Section 7.4), within the time period required (the amount of the contribution, the "Default Amount"), then provided the other Member has contributed its share of an Additional Capital Contribution (or any amounts owed under Section 7.4) (such other Member, the "Contributing Member"), such Contributing Member shall have the right to (A) advance to the Company an amount up to the Default Amount (the date of such advance, the "Tender Date"), (B) a refund of the full amount contributed to the Company by the Contributing Member in connection with such call for Additional Capital Contribution, or (C)

advance the Contributing Member's share of such Additional Capital Contribution or any portion thereof as a loan made to the Company (a "Company Loan"). If the Contributing Member elects to advance the Default Amount (or a portion thereof) to the Company pursuant to clause (A) of the preceding sentence, after the applicable Tender Date (but in any event prior to the later of (i) the first Distribution Date and (ii) the Substantial Completion Date), the Managing Member may elect whether its funding of the Default Amount, or applicable portion thereof, shall be treated as (i) a loan (each such loan, a "Member Loan") to the Defaulting Member (each such loan to be evidenced by a promissory note in form reasonably satisfactory to the Managing Member pursuant to Section 3.4.1 or (ii) dilutive capital pursuant to Section 3.4.2. In the event that no such election is made by the Managing Member prior to the Substantial Completion Date, then the Managing Member shall be deemed to have elected to fund the Default Amount (or applicable portion thereof) as dilutive capital pursuant to Section 3.4.2. Any such election, or deemed election, shall be applied retroactively back to the Tender Date.

3.4.1 **Member Loan**. In the event that the Contributing Member elects to advance a Member Loan, the Capital Account of the Defaulting Member shall be credited with the Default Amount. Any Member Loan shall bear interest from the Tender Date until paid at the Member Loan Rate, and shall be payable by the Defaulting Member from any distributions due to the Defaulting Member hereunder. Interest on a Member Loan to the extent unpaid, shall accrue and compound at the Member Loan Rate. A Member Loan shall be prepayable, in whole or in part, at any time or from time to time without penalty. All distributions to the Defaulting Member hereunder shall be applied first to payment of any interest due under any Member Loan and then to principal until all amounts due thereunder are paid in full. While any Member Loan is outstanding, the Company shall be obligated to pay directly to the Contributing Member, for application to and until all Member Loans (and interest accrued thereon) have been paid in full, the amount of (x) any distributions payable to the Defaulting Member and (y) any proceeds of the sale of the Defaulting Member's Interest in the Company. Any amount that is paid to a Contributing Member that would have otherwise been distributed to a Defaulting Member under this Agreement shall be deemed to have been distributed to such Defaulting Member.

3.4.2 **Dilution.** In the event the Contributing Member elects, or is deemed to have elected, to fund the Default Amount (or applicable portion thereof) as dilutive capital pursuant to Section 3.4, such Contributing Member's Percentage Interest shall be recalculated to equal the percentage equivalent of a fraction, the numerator of which is equal to the sum of (x) the product of the Dilution Percentage and the Default Amount (or applicable portion thereof) funded by the Contributing Member, and (y) all other Capital Contributions of the Contributing Member and the denominator of which is equal to the total sum of the aggregate amount of the Capital Contributions made by all Members through and including the date such Contributing Member funded the Default Amount. The Percentage Interest of a Defaulting Member shall be equal to one hundred percent (100%) minus the Contributing Member's Percentage Interest, as calculated pursuant to the previous sentence.

3.4.3 **Company Loan.** In the event the Contributing Member elects to fund the Contributing Member's share of an Additional Capital Contribution as a Company Loan, the Company Loan (i) shall bear interest from the date such Company Loan is advanced to the Company until paid at the Member Loan Rate, (ii) shall be repaid out of Revenue as it

is received by the Company or otherwise upon dissolution of the Company pursuant to Section 10.1, (a) first, to repay all accrued interest related to such Company Loan and (b) then, to repay the principal outstanding balance of such Company Loan and (iii) shall be secured by the Company's membership interests in the Subsidiary.

3.5 **Guaranty Payments**. Any amounts funded pursuant to Section 7.4 or under any Guaranties shall be treated as Additional Capital Contributions of the Member affiliated with the party that funds such amounts, except to the extent such amounts were funded on account of a JDS At-Fault Guaranty Payment or an Ariel At-Fault Guaranty Payment.

3.6 **Rights With Respect To Capital**.

3.6.1 Company Capital. Except as specifically provided herein, (a) no Member shall have the right to receive any return of its Capital Contributions and (b) no Capital Contribution may be returned in the form of property other than cash.

3.6.2 No Interest on Capital Contributions. Except as expressly provided in this Agreement, no Capital Contribution of any Member shall bear interest or otherwise entitle the contributing Member to any compensation for use of its Capital Contribution.

ARTICLE 4
CAPITAL ACCOUNTS AND ALLOCATIONS

4.1 **Capital Accounts**. A separate Capital Account will be maintained for each Member in accordance with Treasury Regulation Sections 1.704-1(b) and 1.704-2. Consistent therewith, the Capital Account of each Member will be determined and adjusted as follows:

4.1.1 Each Member's Capital Account will be credited with:

(a) Any contributions of cash made by such Member to the capital of the Company and the fair market value of any property contributed by such Member to the capital of the Company (net of any liabilities to which such property is subject or which are assumed by the Company);

(b) The Member's distributive share of Net Profit and items thereof; and

(c) Any other increases required by Treasury Regulation Section 1.704-1(b)(2)(iv).

4.1.2 Each Member's Capital Account will be debited with:

(a) Any distributions of cash made from the Company to such Member plus the fair market value of any property distributed in kind to such Member (net of any liabilities to which such property is subject or which are assumed by such Member);

(b) The Member's distributive share of Net Loss and items thereof; and

(c) Any other decreases required by Treasury Regulation Section 1.704-1(b)(2)(iv).

4.1.3 No Member shall be required to restore any negative balance in his, her or its Capital Account.

4.1.4 In the event that all or a portion of a Member's Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

4.1.5 The Capital Account of each Member shall be adjusted to reflect any adjustment to the Book Basis of the Company's assets attributable to the application of Sections 734 or 743 of the Code to the extent required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m).

4.1.6 Except as otherwise provided in this Agreement, whenever it is necessary to determine the Capital Account balance of any Member, the Capital Account balance of such Member shall be determined after giving effect to all allocations pursuant to this Article 4 and all contributions and distributions made prior to the time as of which such determination is to be made.

4.2 **Allocations**. Net Profits and Net Losses for any taxable year, or portion thereof, shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, and after taking into account actual distributions made during such taxable year, or portion thereof, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Member pursuant to Section 10.4.3 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Book Basis, 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 Book Basis of the assets securing such liability) and the net assets of the Company were distributed in accordance with Section 10.4.3 to the Members immediately after making such allocation, minus (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets. Subject to the other provisions of this Article 4, an allocation to a Member of a share of Net Profit or Net Loss shall be treated as an allocation of the same share of each item of income, gain, loss or deduction that is taken into account in computing Net Profit or Net Loss.

4.3 **Special Allocations and Compliance with Section 704(b)**. The following special allocations shall, except as otherwise expressly provided in this Agreement, be made in the following order:

4.3.1 Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain during a Fiscal Year, so that an allocation is required by Treasury Regulations Section 1.704-2(f), each Member will be allocated, before any other allocation under this Article 4, items of income and gain for such Fiscal Year (and if necessary, subsequent years) in proportion to and to the extent of an amount equal to such Member's share of the net

decrease in Company Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(g)(2). This Section 4.3.1 is intended to comply with, and shall be interpreted consistently with, the "minimum gain chargeback" provisions of Treasury Regulations Section 1.704-2(f).

4.3.2 Minimum Gain Attributable to Member Nonrecourse Debt. If there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations 1.704-2(i)(5), shall be specially allocated items of the Company's income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4). This Section 4.3.2 is intended to comply with the "minimum gain chargeback" requirement of that Section of the Regulations and shall be interpreted consistently therewith.

4.3.3 Qualified Income Offset. If any Member unexpectedly receives any adjustments, allocation or distributions described in clauses (4), (5) or (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d), items of the Company income shall be specially allocated to such Member in an amount and manner sufficient to eliminate his, her, or its Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as quickly as possible; provided, however, that an allocation pursuant to this Section 4.3.3 shall be made only if, and to the extent that, such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in Article 4 tentatively have been made as if this Section 4.3.3 were not in this Agreement. This Section 4.3.3 is intended to constitute a "qualified income offset" within the meaning of Treasury Regulations Section 1.704-l(b)(2)(ii)(d)(3) and shall be interpreted consistently therewith.

4.3.4 Nonrecourse Deductions; Member Nonrecourse Deductions. Nonrecourse Deductions shall be allocated among the Members in accordance with their Percentage Interests. Member Nonrecourse Deductions shall be specially allocated to the Member who bears (or is deemed to bear) the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)(2).

4.3.5 Limitation on Allocation of Losses. To the extent that Net Losses or items of loss or deduction otherwise allocable to a Member hereunder would cause such Member to have an Adjusted Capital Account Deficit as of the end of the taxable year to which such Net Losses, or items of loss or deduction, relate (after taking into account the allocation of all items of income and gain for such taxable period), such Net Losses, or items of loss or deduction, shall not be allocated to such Member and instead shall be allocated to the Members in accordance with Section 4.2 as if such Member were not a Member.

4.3.6 Regulatory Allocations. Any allocations required to be made pursuant to Section 4.3.1 through Section 4.3.5 (the "Regulatory Allocations") (other than allocations, the effects of which are likely to be offset in the future by other special allocations) shall be taken into account, to the extent permitted by the Treasury Regulations, in computing subsequent allocations of income, gain, loss or deduction pursuant to Section 4.2 so that the net amount of any items so allocated and all other items allocated to each Member shall, to the extent possible, be equal to the amount that would have been allocated to each Member pursuant to Section 4.2 had such Regulatory Allocations under this Section 4.3 not occurred.

4.3.7 Liquidation. It is intended that prior to a distribution of the proceeds from a liquidation of the Company, the positive Capital Account balance of each Member shall be equal to the amount that such Member is entitled to receive pursuant to Section 10.4.3. Accordingly, notwithstanding anything to the contrary in this Article 4, to the extent permissible under Sections 704(b) of the Code and the Treasury Regulations promulgated thereunder, Net Profits and Net Losses and, if necessary, items of gross income and gross deductions, of the Company for the year of liquidation of the Company (or, if earlier, the year in which all or substantially all of the Company's assets are sold, transferred or disposed of) shall be allocated among the Members so as to bring the positive Capital Account balance of each Member as close as possible to the amount that such Member would receive if the Company were liquidated and all the proceeds were distributed in accordance with Section 10.4.3.

4.3.8 Tax Matters. For federal income tax purposes, except as otherwise provided in this Section 4.3, each item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its corresponding item of book income, gain, loss or deduction is allocated pursuant to this Article 4.

4.3.9 In accordance with Sections 704(b) and 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any Company asset contributed (or deemed contributed) to the capital of the Company shall, solely for federal income tax purposes, be allocated among the Members so as to take into account any variation between the adjusted basis of such Company asset for federal income tax purposes and its Book Basis upon its contribution (or deemed contribution). If the Book Basis of any Company asset is adjusted, subsequent allocations of taxable income, gain, loss and deduction with respect to such Company asset shall take account of any variation between the adjusted basis of such Company asset for federal income tax purposes and the Book Basis of such Company asset in the manner prescribed under Code Sections 704(b) and 704(c) and the Treasury Regulations thereunder. Any elections or decisions relating to such allocations shall be made by the Managing Member.

4.3.10 If a Member acquires an Interest, redeems all or a portion of his, her or its Interest or transfers an Interest during a taxable year, the Net Profits or Net Losses (and other items referred to in Sections 4.2 or 4.3) attributable to such Interest for such taxable year shall be allocated between the transferor and the transferee by closing the books of the Company as of the date of the transfer, or by any other method permitted under Section 706 of the Code and the Treasury Regulations thereunder that is selected by the Members, provided,

that in any event Net Profits or Net Losses (and other items referred to in Sections 4.2 or 4.3) attributable to any extraordinary non-recurring items of the Company shall be allocated between the transferor and the transferee by closing the books of the Company with respect to such items.

4.3.11 The provisions of this Article 4 (and other related provisions in this Agreement) pertaining to the allocation of items of Company income, gain, loss, deductions, and credits shall be interpreted consistently with the Treasury Regulations, and to the extent unintentionally inconsistent with such Treasury Regulations, shall be deemed to be modified to the extent necessary to make such provisions consistent with the Treasury Regulations.

ARTICLE 5
DISTRIBUTIONS

5.1 **Generally**.

5.1.1 Available Cash Distributions. Available Cash shall be distributed by the Company to the Members on each Distribution Date occurring after the Effective Date as follows: one hundred percent (100%) to the Members in proportion to their respective Percentage Interests at the time of such distribution.

5.1.2 Promote Distributions. Promote Distributions shall be distributed by the Company to the Members in accordance with the Promote Percentages.

5.1.3 Fee Distribution. Any and all fees (including, without, limitation, any development fees, construction management fees, asset management fees, or property management fees) shall be retained by JDS or its designated Affiliate and Ariel acknowledges that JDS or its designated Affiliates may receive such fees; provided however, with respect to any development fee, Ariel shall be entitled to a portion of such development fees equal to the product of (A) sum of (x) Ariel's Percentage Interest and (y) the percentage interest of any new member sourced by Ariel that is admitted to this Company and (B) any such development fees, if, and to the extent, any such fees are actually distributed to Developer.

5.1.4 Distributions Restricted by the Act. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any payment or distribution to any Member on account of its Interest if such payment or distribution would violate the Act or any other applicable law.

5.2 **Effect of Transfers**. Distributions with respect to an Interest shall be made to the Person reflected on the books and records of the Company as owning an Interest on the date of the distribution.

5.3 **Withholding Taxes; Foreign Members**.

5.3.1 If and to the extent a Member is entitled to receive a distribution pursuant to this Agreement, the Company shall be entitled to make payments with respect to such Member in amounts required to discharge any obligation of the Company to withhold or make payments to any federal, state, local or foreign taxing authority ("Taxing Authority")

with respect to any distribution to such Member that arises as a result of such Member's Interest and to withhold (or deduct) the same from distributions to such Member. Any funds withheld by reason of this Section 5.3 shall nonetheless be deemed distributed to the Member in question for all purposes under this Agreement. If a Member is required to make payment to a Taxing Authority pursuant to any applicable law and the Company makes any payment to a Taxing Authority in respect of a Member hereunder that is not withheld from actual distributions to the Member, then such Member shall reimburse the Company for the amount of such payment, plus interest at the rate of ten percent (10%) per annum, compounded annually, on such amount from the date of such payment until such amount is repaid to the Company (or deducted from a distribution), and any such payment will not constitute a Capital Contribution or an Additional Capital Contribution. The amount of a Member's reimbursement obligation under this Section 5.3 to the extent not paid shall be deducted from the distributions to such Member, and any amounts so deducted shall constitute a repayment of such Member's obligation hereunder. Each Member agrees to furnish the Company with any representations and forms as shall be reasonably requested by the Company to assist it in determining the extent of, and in fulfilling, any withholding obligations it may have. Each Member agrees to indemnify and hold harmless the Company and the other Members from and against any liability with respect to taxes, interest and/or penalties which may be asserted by reason of the failure to deduct and withhold tax on amounts distributable or allocable to such Member.

5.3.2 Notwithstanding the provisions of Section 5.3.1, it is the intention of the Members that the Company and its Subsidiaries shall not be obligated to withhold any Available Cash or suffer any other adverse economic consequences on account of a Member's (or its direct or indirect owners') tax structuring, and each Member agrees to take any actions necessary to effectuate the foregoing intention.

ARTICLE 6
RIGHTS, DUTIES, OBLIGATIONS OF MEMBERS

6.1 **Authority of Members**. Management of the Company shall be vested in the Members in accordance with this Agreement. Managing Member shall act as the Managing Member of the Company and shall have the authority, on behalf of the Company, to do all things appropriate to the accomplishment of the purposes of the Company, subject to and in accordance with this Article 6, and Ariel shall have the voting rights and other powers expressly designated to Ariel in this Agreement.

6.2 **Management Duties, Authority and Powers**. Managing Member shall be responsible for supervising and undertaking the Business of the Company and shall make all decisions affecting the operations of the Company, the Subsidiaries and the Property, all subject to and in accordance with this Agreement and subject to the consent and approval of Ariel as required hereunder, including pursuant to Section 6.3. The Managing Member, on behalf of the Company, shall (i) conduct the routine, day-to-day business and affairs of the Company in accordance with this Agreement and applicable Approved Budgets (subject to deviations therefrom permitted under the applicable LP Agreement or approved by an LP), (ii) implement the decisions made by the Managing Member with respect to the Business of the Company, (iii) use commercially reasonable efforts to enforce agreements entered into by the Company and

cause the property manager of the Property to operate the Property in accordance with the property management agreement, (iv) maintain proper files of any agreements entered into by the Company, (v) provide Ariel with copies of all written notices, correspondence and other communications (other than those of a routine or ministerial nature) pertaining to any financing as and when the same are delivered or received, and (vi) provide Ariel with copies of all correspondence and other communications pertaining to any material matter, including, without limitation, environmental matters, relating to the Property and which is likely to have a material adverse effect on the Company or the Property promptly upon or shortly after the delivery or receipt thereof. In connection therewith, Managing Member shall have the right, power and authority, at such times as Managing Member shall determine, without additional consultation, authorization, consent or ratification of any Member, to do all such lawful acts and things as are not prohibited by the Act or this Agreement, including, without limitation, the right, power and authority, subject to the terms of this Agreement, including Section 6.3, to permit or cause the Company or any Subsidiary to do any of the following:

6.2.1 incur expenditures;

6.2.2 prosecute, protect and defend or cause to be prosecuted, protected and defended all Company rights, including, without limitation, rights and title to the Property and the Company Property;

6.2.3 enter into, execute, amend, modify, supplement, acknowledge and deliver any and all contracts with unrelated third parties on arm's length terms, licenses or other instruments necessary, proper or desirable to carry out the Business of the Company;

6.2.4 purchase such insurance as may be required under the Loan Documents and the LP Agreements;

6.2.5 engage and dismiss from engagement any and all agents, independent contractors, and other professionals of the Company;

6.2.6 keep all books of account and other records of the Company in an organized manner; and

6.2.7 cause the Company to make distributions to the Members in accordance with the provisions of this Agreement.

6.3 **Restrictions on Managing Member's Authority**. Notwithstanding anything to the contrary contained in this Agreement, the prior written consent of Ariel shall be necessary for all Major Decisions affecting the Company, it being understood that Managing Member shall not cause the Company to take any action that constitutes a Major Decision without the prior written consent of Ariel. As used herein, a "Major Decision" shall mean any of the following actions:

6.3.1 any amendment or modification of this Agreement or organizational documents (including the certificate of formation, certificate of organization, the operating agreement of a limited liability company and partnership agreement of a partnership) of the Company;

6.3.2 without the approval of an LP, any agreement entered into directly or indirectly by the Company or any Subsidiary of the Company with a Member or any Affiliate of a Member and/or any member, shareholder, officer or employee thereof, except (i) as contemplated or permitted by an LP Agreement, (ii) as contemplated in Section 6.11, or (iii) for that certain Amended and Restated Limited Liability Agreement of Dekalb MM entered into on or about the date hereof by the Company and PG DBK LLC, a Delaware limited liability company, which agreement shall not have a material adverse effect on Ariel's interest in the Company;

6.3.3 making any change to a tax election of the Company that is materially adverse to any Member or converting the Company to a corporation;

6.3.4 any act, or the approval of any act, by or on behalf of the Company or any Subsidiary of the Company which would make it impossible to carry on the Business of the Company or any Subsidiary of the Company presently conducted and as presently proposed to be conducted other than a sale of all or substantially all of the assets of the Company or a Subsidiary;

6.3.5 any dissolution of, or any approval or disapproval of the dissolution of, the Company or any Subsidiary of the Company other than following a sale of all or substantially all of the Company's or such Subsidiary's assets in accordance with the terms hereof;

6.3.6 the merger or consolidation of, or the approval or disapproval of the merger or consolidation of, the Company with any other entity;

6.3.7 the filing, or the approval or disapproval of the filing, on behalf of the Company (where the Company) of any petition, or consent to the appointment of a trustee or receiver or any judgment or order, under state or federal bankruptcy laws;

6.3.8 any distribution to the Members other than cash;

6.3.9 cause the Company to loan Company funds to any Person other than a Subsidiary;

6.3.10 commingle Company funds with the funds of any other Person other than a Subsidiary;

6.3.11 take any action which would cause the Company to become an entity other than a Delaware limited liability company or other than a partnership for U.S. federal income tax purposes;

6.3.12 permit the Company to make any acquisition or investment outside the ordinary course of its business other than through a Subsidiary with the approval of an LP or in accordance with an LP Agreement;

6.3.13 admit any Member as a member of the Company, issuing additional membership interests or other securities in the Company other than on arm's length terms;

6.3.14 without the approval of an LP, except as contemplated or permitted by an LP Agreement, take, permit or approve the taking or any action by or through a Subsidiary of the Company if such action would be a Major Decision if taken directly by the Company; and

6.3.15 obligating the Company as a surety, guarantor, indemnitor or accommodating party to any obligation of any other Person other than a Subsidiary.

6.4 Intentionally Omitted.

6.5 **Duty of Care**. None of the Members or Managing Member shall have any duties or liabilities to the Company or any other Member (including any fiduciary duties); provided, however, that this sentence shall not eliminate or limit the liability of such parties (a) for acts or omissions that involve fraud, intentional misconduct, gross negligence or a knowing and culpable violation of law, or (b) for any transaction not permitted or authorized under or pursuant to this Agreement from which such party derived a personal benefit unless all of the Members have approved in writing such transaction; provided further, however, that the duty of care of each of such parties is to not commit fraud, intentional misconduct, gross negligence or a knowing and culpable violation of law.

6.6 **Advances and Reimbursement to the Members**. The Managing Member shall be entitled to receive, out of Company funds available therefor, reimbursements of all reasonable, actual, out-of-pocket costs and expenses incurred in connection with the Business of the Company.

6.7 **Limitations on Liability of Managing Member to Members**. Anything in this Agreement to the contrary notwithstanding, neither Managing Member nor its Affiliates nor any other Member nor any of their respective Affiliates shall be liable for the return of Capital Contributions of the Members or for any portion thereof, it being expressly understood that any return of capital shall be made solely from the assets of the Company.

6.8 **Other Business Ventures**. The Members and/or their respective Affiliates (including, without limitation, any member or manager thereof) may engage in or possess an interest in other business ventures of every nature and description, independently or with others, whether such ventures are competitive with the Company or otherwise; and except as expressly provided in an independent written and duly executed instrument, neither the Company nor the other Members shall have any right by virtue of this Agreement in or to such independent ventures or to the income or profits derived therefrom.

6.9 **Compensation of Managing Member and Ariel**. No salaries or other benefits shall be paid to Managing Member or any successor in its capacity as Managing Member or to Ariel in its capacity as a Member.

6.10 **Separateness Covenants**. Managing Member shall cause each of the Company, Property Owner and each other Subsidiary, respectively, to (a) maintain books and records separate from any other Person, (b) maintain its bank accounts separate from any other Person, (c) not commingle its assets with those of any other Person, (d) conduct its own business in its own name, (e) maintain separate financial statements, showing its assets and liabilities

separate and apart from those of any other Person, (f) pay its own liabilities and expenses only out of its own funds, (g) observe all limited liability company and other organizational formalities, (h) maintain an arm's length relationship with its Affiliates and enter into transactions with Affiliates only on a commercially reasonable basis, (i) pay the salaries of its own employees from its own funds, (j) maintain a sufficient number of employees in light of its contemplated business operations, (k) not guarantee or become obligated for the debts of any other Person, (l) not hold out its credit as being available to satisfy the obligations of any other Person, (m) not acquire the obligations or securities of its Affiliates or members or partners, as the case may be, (n) not make loans to any other Person or buy or hold evidence of indebtedness issued by any other Person (other than cash and investment grade securities), (o) allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including payment for office space and services performed by any employee of any Affiliate, (p) use separate stationery, invoices and checks bearing its own name, (q) not pledge its assets for the benefit of any other Person, (r) hold itself out as a separate entity, (s) correct any known misunderstanding regarding its separate identity and (t) not identify itself as a division of any other Person.

6.11 **Contracts with Affiliates of Managing Member and Fees**. Property Owner may enter into one or more agreements with Managing Member and/or its Affiliates with respect to the services JDS and/or its Affiliates will or have provided in connection with the Fees.

6.12 **Approved Budget**. Managing Member shall deliver to Ariel a copy of any development or operating budgets approved pursuant to an LP Agreement (each, an "Approved Budget") after the same is adopted or amended by all appropriate parties.

6.13 **No Debt Acquisition**. In no event shall the Members, any Guarantor or any of their Affiliates purchase any Loan or any direct or indirect interest therein (excepting ownership and purchases of public securities in any Lender) without the consent of the Managing Member.

6.14 **Acts of Managing Member as Conclusive Evidence of Authority**. Subject to Section 6.3, to the fullest extent permitted by law, every contract, deed, mortgage, deed of trust, pledge, lease and other credit agreement or instrument executed by Managing Member, including, without limitation, any Loan Document, shall be conclusive evidence in favor of every Person relying thereon or claiming thereunder that at the time of the delivery thereof: (a) the Company was in existence; (b) neither this Agreement nor the Certificate of Formation had been amended in any manner so as to restrict the delegation of authority among the Members to Managing Member; and (c) the execution and delivery of such instrument was duly authorized by the Company, to the fullest extent permitted by law. Any Person may always rely on a certificate addressed to such Person and signed by Managing Member hereunder (i) setting forth the name of the Managing Member, (ii) as to the existence or non-existence of any fact which constitutes a condition precedent to acts by the Members or Managing Member or in any other manner germane to the affairs of the Company, (iii) setting forth the Persons who are authorized to execute and deliver any instrument or document on behalf of the Company, (iv) certifying as to the authenticity of any copy of the Certificate of Formation, this Agreement, any amendments thereto and hereto and any other document relating to the conduct of the affairs of the Company, or (v) as to any action taken or not taken by the Company or as to any other matter whatsoever

involving the Company, Managing Member or any Member in the capacity as a Member or Managing Member. In taking, or refraining from taking, any actions hereunder Managing Member shall act in its own self interest. Managing Member shall have no authority to perform any act in respect of the Company in violation of any provisions of this Agreement, applicable laws or regulations or any Loan Document.

ARTICLE 7
MEMBERS' MEETINGS, RIGHTS, OBLIGATIONS AND LIABILITIES

7.1 **Limitation of Liability**. The Members will not be bound by, or be personally liable for, the expenses, liabilities or obligations of the Company except as otherwise provided in the Act. The Members will not be obligated to make any Capital Contributions other than as provided in this Agreement.

7.2 **No Participation in Management**. The Members, in their capacity as such, may not transact any business for the Company and will have no power to execute agreements on behalf of or otherwise bind or commit the Company, but they may exercise the rights and powers granted to them in this Agreement, including, without limitation, the right to give consents and approvals to the extent provided in this Agreement and the right of Managing Member or an Affiliate thereof to act as Managing Member. The exercise of any such rights and powers will be deemed to relate to the basic structure of the Company and not the exercise of control over the Business of the Company.

7.3 **Return of Capital Contributions**. Except as otherwise provided in this Agreement, no Member will have the right to (a) demand a withdrawal, reduction or return of its Capital Contributions or receive interest thereon, (b) demand property other than cash in return of its Capital Contributions or, to the fullest extent permitted by law, bring an action for partition against the Company, or (c) receive any priority over any other Member with respect to the return of its Capital Contributions.

7.4 **Loan**. The Subsidiaries of the Company have obtained and intend to apply for and secure one or more loans for the acquisition, development, construction, refinancing and operation of the Property (a "Loan", and any Person providing a Loan, a "Lender"). Guarantor has executed, and may in the future execute additional, Guaranties. In the event that any payment ("Guaranty Payment") is alleged against, payable or paid by Guarantor under any Guaranty and such Guaranty Payment is an Ariel At-Fault Guaranty Payment, then Ariel Guarantor shall pay to Guarantor the amount of such Guaranty Payment and indemnify, defend and hold JDS and Guarantor harmless for one hundred percent (100%) of the Ariel At-Fault Guaranty Payment. In the event that any Guaranty Payment is alleged against, payable or paid by Guarantor under any Guaranty and such Guaranty Payment is a JDS At-Fault Guaranty Payment, then JDS Guarantor shall pay the amount of such Guaranty Payment without any right of reimbursement or indemnity from or by the Company.

ARTICLE 8
RESTRICTIONS ON TRANSFER OR CONVERSION OF INTERESTS

8.1 **Transfer or Assignment of Interests**. Subject to Section 8.2, the Interest of each Member is personal property and may be transferred or assigned only as provided in this Agreement. Except as otherwise provided, no direct or indirect transfer, hypothecation, encumbrance or assignment of a Member's Interest, any part thereof or any direct or indirect interests therein (a "Transfer") will be valid without the prior written approval of the Managing Member; provided, however, no Member shall have the right to pledge its direct or indirect interests in the Company without the prior written approval of the Managing Member. No transferee which has obtained an Interest without the prior written approval of the Managing Member as required by this Section 8.1 or which has failed to comply with Section 8.3 shall have any right to become a Member and shall not be an assignee, as such Transfer without the approval of the Managing Member shall, to the fullest extent permitted by law, be null and void and of no effect.

8.2 **Permitted Transfers**. Subject to the requirements of a Loan, the following Transfers are permitted without the consent of the Managing Member:

8.2.1 a Member may Transfer all or a portion of its Interest at any time to a Family Member or for estate planning purposes to trusts of which Family Members are beneficiaries;

8.2.2 Managing Member or its direct and indirect beneficial owners may Transfer its direct or indirect interests in Managing Member, provided that JDS Guarantor retains Control of Managing Member;

8.2.3 Ariel or its direct and indirect beneficial owners may Transfer its direct or indirect interests in Ariel, provided that Ariel Principal retains Control of Ariel; and

8.2.4 Managing Member may Transfer direct or indirect interests in Managing Member to employees of JDS Development Group pursuant to employee incentive plans, provided that JDS Guarantor retains Control of Managing Member.

8.3 **Admission of New Members**. Notwithstanding anything to the contrary set forth in this Article 8, no Transfer shall be permitted or effective for any purpose without the consent of Lender, if required under the Loan Documents, shall have been obtained in writing. In addition, no such Transfer shall be binding on the Company unless (a) the transferee shall execute and acknowledge an instrument, in form and substance reasonably satisfactory to the Managing Member, whereby it agrees to assume and be bound by all of the covenants, terms and conditions of this Agreement from and after the effective date of such Transfer, (b) a duplicate original of such instrument duly executed and acknowledged by the parties thereto is delivered to the Company, and (c) the Transferee shall pay all reasonable out-of-pocket expenses in connection with its admission as a Member (including, without limitation, all transfer taxes payable in connection therewith). If a Member transfers all of its Interest pursuant to this Article 8, the Transferee shall be admitted to the Company as a member or managing member, as applicable, of the Company upon the later to occur of (i) its delivery of the executed and acknowledged instrument described in subsection (a) of this Section 8.3 to the Company in accordance with clause (b) of this Section 8.3, and (ii) the payment to the Company by such transferee of the expenses set forth in clause (c) of this Section 8.3.

8.4 **Void Transfers**. To the fullest extent permitted by law, any Transfer made in violation of this Article 8 shall be of no force or effect and shall not bind or be recognized by the Company, and the Member attempting such Transfer shall continue to be treated as a member for all purposes, and remain obligated under each and every provision, of this Agreement.

ARTICLE 9
BOOKS, RECORDS, REPORTS AND BANK ACCOUNTS

9.1 **Maintenance of Books and Records**. Managing Member shall maintain, or cause to be maintained, at the expense of the Company, in a manner customary and consistent with good accounting principles, practices and procedures, a comprehensive system of office records, books and accounts (which records, books and accounts shall be and remain the property of the Company) in which shall be entered fully and accurately each and every financial transaction with respect to the operations of the Company. Bills, receipts and vouchers shall be maintained on file by Managing Member. Managing Member shall maintain said books and accounts in a safe manner and separate from any records not having to do directly with the Company. Such books and records of account shall be prepared and maintained by Managing Member at the principal place of business of the Company or such other place or places as may from time-to-time be determined by Managing Member. The books of the Company shall be kept on the accrual basis in accordance with GAAP, and the Company shall report its operations for tax purposes on the accrual method. The taxable year of the Company shall end on December 31 of each year, unless a different taxable year shall be required by the Code.

9.2 **Annual Accounting**. The Company's accountant, approved by the Managing Member, (the "Approved Accountant") shall perform "compilation" accounting services and preparation of returns (or, if Ariel or Lender shall require, shall review or audit the statements of the Company and the Subsidiaries at the expense of the Company). Within ninety (90) days after the close of each Fiscal Year, Managing Member shall (a) cause to be prepared and submitted to each Member a balance sheet and income statement for the preceding Fiscal Year (or portion thereof) generally in conformity with GAAP, and (b) provide to the Members all information necessary for them to complete federal and state tax returns. The statements shall include all required disclosures that are considered an integral part of the financial statements as prepared in conformity with industry standards. Supplemental schedules and information shall be included to provide any necessary additional disclosure and shall include, in addition, a reconciliation of book-to-tax in order clearly to identify, document and support all book-tax differences. Within forty five (45) days following the end of each quarter of each calendar year, the Managing Member shall cause to be prepared and submitted to each Member unaudited but reviewed quarterly financial statements consisting of a balance sheet as of the end of such calendar quarter, a statement of income, and a statement of cash flow prepared by the Managing Member. In addition, the Managing Member shall cause the Company to provide the Members promptly after becoming available (but not later than May 30 following the close of the Fiscal Year), copies of the Company's federal, state and local income information tax returns, and the information with respect to the Company necessary for all such Members, if and as applicable, to prepare their federal and state income tax returns, including Schedule K-1 (Form 1065) forms for all of the Members. Upon request, the Managing Member shall cause the Company to provide to any Member any such information as may be reasonably requested by such Member in order

to prepare its U.S. federal, state or local or foreign tax returns or otherwise to comply with U.S. federal, state or local or foreign tax law.

9.3 **Inspection and Audit Rights**. Each Member may, on reasonable notice and at its own expense, review and/or audit the books, records and reports of the Company, Property Owner and any other Subsidiary, and in furtherance thereof, may inspect and copy during normal business hours any of the books and records required to be maintained in accordance with this Agreement. Such right may be exercised through any agent, representative or employee of a Member.

9.4 **Bank Accounts**. The bank accounts of the Company shall be maintained in such banking institutions as Managing Member determines in its reasonable discretion.

9.5 **Tax Matters Handled by Managing Member.**

9.5.1 The tax matters partner shall cause all Company tax returns to be timely filed with the applicable government authorities within allowable time periods, including extensions, and shall use reasonable efforts to provide such tax returns in a timely manner to the Members with the necessary information.

9.5.2 It is intended that the Company be treated as a partnership for federal income tax purposes and neither the Company nor any Member shall make any election (for tax purposes or otherwise) inconsistent with such treatment without the consent of all Members.

9.5.3 The Managing Member shall be the "tax matters partner" of the Company for purposes of Section 6231(a)(7) of the Code. The tax matters partner is authorized to represent the Company, at the Company's expense, in connection with all examinations of the Company's affairs by tax authorities, including administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Any direct or indirect costs and expenses incurred by the tax matters partner, acting in his, her or its capacity as such, shall be deemed costs and expenses of the Company, and the Company shall reimburse the tax matters partner for such amounts. The tax matters partner shall not take any material action as tax matters partner without the prior consent of the Members, and in any event shall not have any right to settle or compromise any matter raised by the Internal Revenue Service or extend the statute of limitations without the approval of a Member who would be adversely effected, not to be unreasonably withheld. The tax matters partner shall keep the other Members informed of, and be given an opportunity to participate in a non-binding manner in, all such matters.

9.6 **Reports**.

9.6.1 Managing Member shall deliver to Ariel any financial reports, notices or information required to be delivered to any Lender and any reports, notices or information required to be delivered.

ARTICLE 10
TERMINATION AND DISSOLUTION

10.1 **Dissolution**. The Company shall be dissolved and its affairs wound up upon the first to occur of any of the following events:

10.1.1 the expiration of the Period of Duration;

10.1.2 the unanimous written agreement of all Members to dissolve the Company;

10.1.3 the sale, exchange or other transfer of all or substantially all Company Property or the Property; and

10.1.4 the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Act.

The commencement of a Bankruptcy Action by or against any Member shall not, in and of itself, result in the dissolution of the Company or in the cessation of the Member being a member in the Company. The withdrawal or resignation of a Member or the dissolution of a Member shall not, by itself, constitute a dissolution of the Company.

10.2 **Statement of Intent to Dissolve**. To the extent contemplated by the Act, as soon as possible after the occurrence of any of the events specified in Section 10.1, the Company shall execute a statement of intent to dissolve in such form as prescribed by the Secretary of State.

10.3 **Conduct of Business**. Upon the dissolution of the Company, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business in accordance with the Act, but the Company's separate existence shall continue in accordance with the Act. The Company shall terminate when (a) all of the assets of the Company shall have been distributed in the manner provided for in this Agreement and the Act, and (b) the Certificate of Formation shall have been cancelled in the manner provided for in the Act.

10.4 **Distribution of Net Proceeds**. The Members shall continue to distribute Available Cash during the winding-up period in the same manner and the same priorities as provided for in Article 5. Subject to the Act, the proceeds from the liquidation of Company Property shall be applied in the following order:

10.4.1 to the payment of creditors, in the order of priority as provided by law;

10.4.2 to the establishment of such Reserves that Managing Member may reasonably deem necessary, appropriate or desirable for any contingent or unforeseen liabilities, debts or obligations of the Company arising out of or in connection with the Company operations, subject to the reasonable approval of Ariel; and

10.4.3 in the same manner and order as is set forth in Section 5.1.

Subject to the Act, where the distribution pursuant to this Section 10.4 consists both of cash (or cash equivalents) and non-cash assets, the cash (or cash equivalents) shall first be distributed, in descending order, to fully satisfy each category starting with the most preferred category above. In the case of non-cash assets, the distribution values are to be based on the fair market value thereof as determined in good faith by the Person winding up the affairs of the Company, and the shortest maturity portion of such non-cash assets (e.g., notes or other indebtedness) shall, to the extent such non-cash assets are readily divisible, be distributed, subject to the Act, in descending order, to fully satisfy each category above, starting with the most preferred category.

ARTICLE 11
INDEMNIFICATION OF MEMBERS, MANAGING MEMBER AND THEIR AFFILIATES

11.1 **Indemnification of the Members**. To the fullest extent permitted by law, the Company shall indemnify and hold harmless the Members and their respective members, partners, officers, directors, employees, agents and Affiliates (each, an "Indemnitee") from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including reasonable attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings in which the Indemnitee may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to the Business of the Company or any Transaction Document, regardless of whether the Indemnitee continues to be a Member or a partner, officer, director, employee, agent or Affiliate of the Member at the time any such liability or expense is paid or incurred if the Indemnitee's conduct did not constitute fraud, willful misconduct or gross negligence and if the Indemnitee acted in a manner it believed to be commercially reasonable and in good faith and in the best interests of the Company.

11.2 **Guarantee of Company Indebtedness**. No Member shall enter into (or permit any Person related to a Member to enter into) any arrangement with respect to any liability of the Company that would result in such Member (or a Person related to such Member) under Regulations Section 1.752-4(b) bearing the economic risk of loss (within the meaning of Regulations Section 1.752-2) with respect to such liability unless such arrangement has been consented to and approved by all of the Managing Member. This Section 11.2 shall not prohibit any Member from making any additional Capital Contributions under Sections 3.3 or 3.4.1.

11.3 **Subordination of Indemnification**.

11.3.1 Loans. Notwithstanding anything to the contrary contained in this Article 11, the Company's obligation to indemnify the Members shall, for so long as there remains outstanding any indebtedness under any Loan, be fully subordinated to such Loan and shall not constitute a claim against the Company in the event that Available Cash is insufficient to pay such obligation.

11.4 **Expenses**. To the fullest extent permitted by law, expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to Section 11.1 or Section 11.2 shall, from time to time, be advanced by the Company prior to the final disposition

of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that such Person is not entitled to be indemnified as authorized in Section 11.1 or Section 11.2.

11.5 **Assets of the Company**. Any indemnification under Section 11.1 shall be satisfied solely out of the assets of the Company. Subject to the Act, no Member shall be subject to personal liability for or required to fund or to cause to be funded any obligation by reason of these indemnification provisions.

11.6 **Insurance**. The Company shall at all times maintain insurance, with the Company and the Subsidiaries (as additional insureds, to the extent of their interests), in such amounts and with such coverages as shall be required pursuant to the Loan Documents (but in no event less than that in effect as of the Effective Date) and shall maintain such insurance amounts and coverages during the term of this Agreement, regardless of whether the Loan is replaced or repaid.

ARTICLE 12
INTENTIONALLY OMITTED

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 **Counterparts**. This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

13.2 **Survival of Rights**. This Agreement shall be binding upon and, as to permitted or accepted successors, transferees and assigns, inure to the benefit of the Members and the Company and their respective heirs, legatees, legal representatives, successors, transferees and assigns, in all cases whether by the laws of descent and distribution, merger, reverse merger, consolidation, sale of assets, other sale, operation of law or otherwise.

13.3 **Severability**. In the event any Section, or any sentence within any Section, is declared by a court of competent jurisdiction to be void or unenforceable, such sentence or Section shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in full force and effect.

13.4 **Notification or Notices**. In order to be effective, all notices, consents, approvals and disapprovals required or permitted by this Agreement to be given ("Notices") must be in writing and (a) sent by electronic mail ("e-mail"), if followed by delivery by one of the other methods set forth herein within one (1) Business Day of e-mail transmittal, (b) delivered by nationally recognized overnight delivery service, (c) placed in the United States mail, registered with return receipt requested, properly addressed and with the full postage prepaid, or (d) personally delivered. Notices shall be deemed received and effective (i) if sent as described in clause (a), on the date and time of transmittal, (ii) if sent as described in clauses (b)

or (d), on the date actually received or delivery is refused, and (iii) if sent as described in clause (c) above, two (2) Business Days after being mailed as aforesaid. Notices must be addressed in each case as follows:

If to Managing Member:
340 Flatbush Sponsor LLC
c/o JDS Development Group
104 Fifth Avenue
New York, New York 10011
Attn: Michael Stern
Email: mstern@jdsdevelopment.com

with a copy to:
Kasowitz Benson Torres LLP
1633 Broadway
New York, New York 10019
Attn: Wallace L. Schwartz, Esq.
Email: WSchwartz@kasowitz.com

If to Ariel:
Ackerman 9 Dekalb Avenue LLC
c/o Ackerman Management & Development LLC
1153 Broadway, 3rd Floor
New York, New York 10001
Attn: Ariel Ackerman
Email: ariel@ackermd.com

with a copy to:
Sullivan & Worcester LLP
1633 Broadway, 32nd Floor
New York, New York 10019
Attn: Oded Har-Even
Email: Ohareven@zag-sw.com

Notices shall be valid only if served in the manner provided above. Notices may be sent by the attorneys for the respective parties and each such Notice so served shall have the same force and effect as if sent by such party. Each party will be entitled to change its address for purposes of Notice in writing, communicated in accordance with the provisions of this Section 13.4.

13.5 **Construction**. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Members.

13.6 **Section Headings**. The captions of Sections in this Agreement are for convenience only and in no way define, limit, extend or describe the scope or intent of any of the provisions hereof, shall not be deemed part of this Agreement and shall not be used in construing or interpreting the Agreement.

13.7 **Governing Law**. This Agreement shall be construed according to the internal laws, and not the laws pertaining to choice or conflict of laws, of the State of New York.

13.8 **Additional Actions**. Managing Member and Ariel agree to perform all further acts and to execute, acknowledge and deliver all documents which may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement, including, without limitation, acknowledging before a notary public any signature heretofore or hereafter made.

13.9 **Pronouns and Plurals**. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

13.10 **Waiver of Right to Jury**. TO THE FULLEST EXTENT PERMITTED BY LAW, WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED AGREEMENT, EACH MEMBER HEREBY IRREVOCABLY WAIVES ALL RIGHTS IT MAY HAVE TO DEMAND A JURY TRIAL. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY THE MEMBERS AND EACH MEMBER ACKNOWLEDGES THAT NONE OF THE OTHER MEMBERS NOR ANY PERSON ACTING ON BEHALF OF THE OTHER PARTIES HAS MADE ANY REPRESENTATION OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH MEMBER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. EACH OF THE MEMBERS FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

13.11 **Members' Representations and Warranties**. Each of the Members on behalf of itself, severally, represents and warrants as of the Effective Date to the other Members that (a) it has all necessary power and authority to execute and deliver, and perform its obligations under, this Agreement as a Member; this Agreement has been duly authorized, executed and delivered by such Member and the constituent members or Members of such Member; this Agreement constitutes the valid and legal binding obligation of each Member and is enforceable against each Member in accordance with its terms, subject, as to enforceability, to bankruptcy, insolvency, moratorium and other similar laws of general applicability affecting creditors rights and general equity principles; and no consent or approval from any governmental authority or any third party is required in connection with the execution and delivery of this Agreement; (b) neither the execution of this Agreement by a Member nor the performance by each Member of its obligations hereunder will (i) conflict with or result in a breach of, the terms, conditions or provisions of, or constitute a default by any Member under, any agreement by which a Member is bound or (ii) violate any restriction, requirement, covenant or condition contained in any agreement to which a Member (to the best of each Member's knowledge) is bound; (c) it has not relied on any representations, warranties or promises (written or oral) with respect to the Company, Property Owner, any other Subsidiary or the Property except as expressly set forth herein; and (d) it is not, and will not become, a Person subject to sanctions or trade restrictions under United States law ("Embargoed Person" or "Embargoed Persons") that are identified on (1) the "List of Specially Designated Nationals and Blocked Persons"

maintained by the Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury, and/or on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or regulation promulgated thereunder, with the result that the investment in the Company (whether directly or indirectly), is prohibited by law, or (2) Executive Order 13224 (September 23, 2001) issued by the President of the United States ("Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), any related enabling legislation or any other similar Executive Orders, and (b) no Embargoed Person has any direct interest or indirect interest, of any nature whatsoever in the Company, with the result that the investment in the Company (whether directly or indirectly), is prohibited by law. Managing Member represents and warrants that the organizational chart set forth on Exhibit B-1 is true, correct and complete. Ariel represents and warrants that the organizational chart set forth on Exhibit B-2 is true, correct and complete.

13.12 **Third Party Beneficiaries**. There are no third party beneficiaries of this Agreement except such Persons as may be entitled to the benefits of Section 11.1.

13.13 **Partition**. The Members agree that the Property and any Company Property that the Company may own or have an interest in is not suitable for partition. To the fullest extent permitted by law, each of the Members hereby irrevocably waives any and all rights that it may have to maintain any action for partition of any Company Property in which the Company may at any time have a direct or indirect interest.

13.14 **Entire Agreement**. The Transaction Documents and the Certificate of Formation constitute the entire agreement of the Members with respect to, and supersede all prior written and oral agreements, understandings and negotiations with respect to the subject matter hereof.

13.15 **Waiver**. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

13.16 **Attorneys' Fees**. To the fullest extent permitted by law, in the event of any litigation, arbitration or other dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation, arbitration or other dispute shall be entitled to, in addition to any other damages assessed, its reasonable attorney fees, and all other costs and expenses incurred in connection with settling or resolving such dispute. To the fullest extent permitted by law, the attorneys' fees which the prevailing party is entitled to recover shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. To the fullest extent permitted by law, in addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit or arbitration procedure on this Agreement shall be entitled to its reasonable attorneys' fees incurred in any post judgment proceedings to collect or enforce the judgment. To the fullest extent permitted by law, this attorneys' fees provision is separate and several and shall survive the merger of this Agreement into any judgment.

13.17 **Authorized Representatives**. Wherever in this Agreement the consent or approval of a Member is required with respect to all matters pertaining to the Company, (a) the written statements and representations of an Authorized Representative of a Member that is not a natural Person shall be the only authorized statements and representations of such Member with respect to the matters covered by this Agreement, and (b) the written statement or representation of any one Authorized Representative of such Member shall be sufficient to bind such Member with respect to all matters pertaining to the Company. Wherever used in this Agreement, the terms "approved by" or "approval of" or "consented to" or "consent of" or "satisfactory to", or words of similar import, with respect to a Member that is not a natural Person, means a decision or action which has been consented to in writing by the Authorized Representative of such Member, and with respect to a Member who is an individual, means a decision or action which has been consented to in writing by such individual.

13.18 **Confidentiality**. Except as contemplated by Section 13.19, the Members agree not to disclose or permit the disclosure of any of the terms of this Agreement or any other documents executed in connection with this Agreement (collectively, "Confidential Information"), provided that such disclosure may be made (a) to any Person who is a member, partner, officer, director or employee of either Member or an Affiliate of either Member or counsel to or accountants of either Member or an Affiliate of either Member solely for their use and on a need-to-know basis, (b) with the prior consent of the other Member, (c) subject to the following sentence, pursuant to a subpoena or order issued by a court, arbitrator or governmental body, agency or official, (d) to any Lender, or (e) if required under applicable law. In the event that Managing Member shall receive a request to disclose any Confidential Information under a subpoena or order, Managing Member shall (i) promptly notify Ariel thereof, (ii) consult with Ariel on the advisability of taking steps to resist or narrow such request and (iii) if disclosure is required or deemed advisable, cooperate with Ariel in any attempt it may make to obtain an order or other assurance that confidential treatment will be accorded the Confidential Information that is disclosed. Notwithstanding any terms or conditions in this Agreement to the contrary (including, without limitation, those contained in this Section 13.18), but subject to confidentiality restrictions reasonably necessary to comply with federal or state securities laws, Managing Member (and each employee, representative or other agent of Managing Member) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. For the avoidance of doubt, this authorization is not intended to permit disclosure of the names of, or other identifying information regarding, the participants in the transaction, or of any information or the portion of any materials not relevant to the tax treatment or tax structure of the transaction.

13.19 **Public Announcements**. Managing Member or any of its members, partners, principals, or Affiliates shall have the right to issue any press releases or otherwise make any public statements with respect to the Company or the transactions contemplated by this Agreement. Neither Ariel nor any of its members, partners, principals, or Affiliates shall have the right to issue any press releases or otherwise make any public statements with respect to the Company or the transactions contemplated by this Agreement.

13.20 **Brokers**. Each of the Members represent that neither it, nor any of its Affiliates has dealt with any financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement, and each of the Members hereby agrees, to indemnify, defend and hold the other Member harmless from and against any and all claims, liabilities, costs and expenses of any kind (including attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of such Member in connection with the transactions contemplated herein.

[NO FURTHER TEXT ON THIS PAGE]

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

JDS:

340 FLATBUSH SPONSOR LLC,
a Delaware limited liability company

By:_____
Name: Michael Stern
Title: Authorized Signatory

Ariel:

ACKERMAN 9 DEKALB AVENUE LLC,
a Delaware limited liability company

By:_____
Name: Ariel Ackerman
Title: Authorized Signatory

THE UNDERSIGNED HAS EXECUTED
THIS AGREEMENT SOLELY WITH RESPECT TO
SECTION 7.4 HEREOF:

Ariel Ackerman

Exhibit A

INTENTIONALLY OMITTED

Exhibit B-1

ORGANIZATIONAL CHART OF MANAGING MEMBER

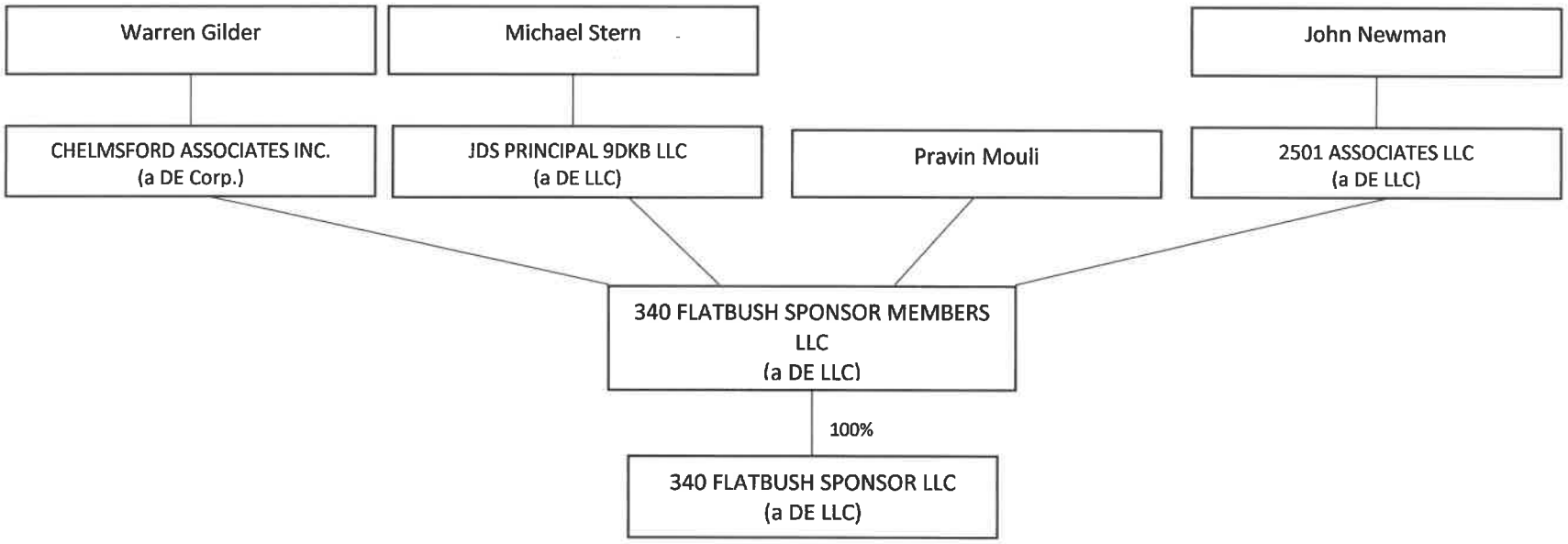

Exhibit B-2

ORGANIZATIONAL CHART OF ARIEL

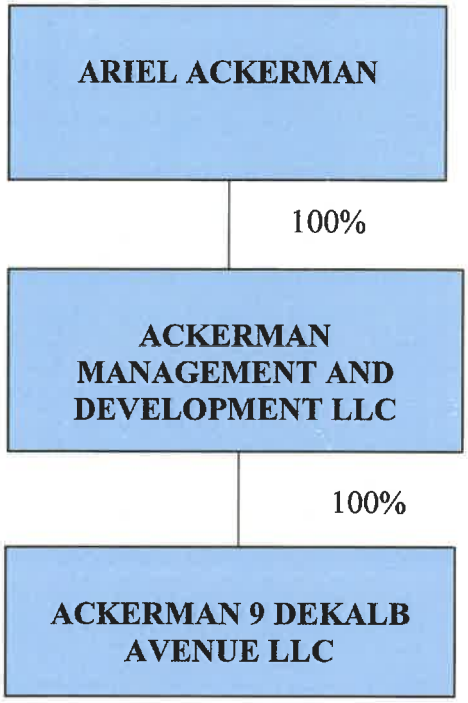

Exhibit C

INTENTIONALLY OMITTED

Exhibit D

SCHEDULE OF INITIAL CAPITAL CONTRIBUTIONS

Member	Initial Capital Contribution
JDS	$18,000,000.00
Ariel	$2,000,000.00