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LIMITED LIABILITY AMENDMENT

FSM PARTNERS, L.L.C.

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**AMENDMENT NO. 2
SPECIAL PURPOSE ENTITY PROVISIONS FOR
ARTICLES OF ORGANIZATION
FSM PARTNERS, L.L.C., a Florida limited liability company**

ARTICLE FIVE: PURPOSE

FSM PARTNERS, L.L.C., a Florida limited liability company (the "Company(s)") business and purpose shall consist solely of the acquisition, ownership, operation and maintenance of the real estate project known as Eckerd Store No. 3965, located in the Town of Jupiter, Florida (the "Property") and activities incidental thereto.

ARTICLE SIX: POWERS AND DUTIES

Notwithstanding any other provisions of these Articles and so long as any obligations secured by a first priority mortgage incurred in connection with any financing of the Property (a "Security Instrument") remain outstanding and not discharged in full, without the consent of all members, the Company shall have no authority on behalf of the Company to:

- (i) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than obligations secured by the Security Instrument, except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Property in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due and provided in any event, the outstanding principal balance of such debt shall not exceed at any one time four percent (4%) of the outstanding obligations secured by the Security Instrument;
- (ii) seek the dissolution or winding up, in whole or in part, of the Company;
- (iii) merge into or consolidate with any person or entity or dissolve, terminate, or liquidate, in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;
- (iv) file a voluntary petition or otherwise initiate proceedings to have the Company adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company, or file a petition seeking or consenting to reorganization or relief of the Company as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Company; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Company or of all or any substantial part of the properties and assets of the Company, or make any general assignment for the benefit of creditors of the Company, or admit in writing the inability of the Company to pay its debts generally as they become due or declare or effect a

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moratorium on the Company debt or take any action in furtherance of any such action; or

- (v) amend, modify or alter Articles Five, Six, Seven, Eight, Nine or Ten of these Articles .

Notwithstanding the foregoing and so long as any obligation secured by the Security Instrument remains outstanding and not discharged in full, the Company shall have no authority to take any action in items (i) through (iii) and (v) without the written consent of the holder of the Security Instrument.

ARTICLE SEVEN: TITLE TO COMPANY PROPERTY

All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no member shall have any ownership interest in any Company property in its individual name or right, and each member's interest in the Company shall be personal property for all purposes.

ARTICLE EIGHT: SEPARATENESS/OPERATIONS MATTERS

The Company has not and shall not:

- (a) engage in any business or activity other than the acquisition, development, ownership, operation, leasing and managing and maintenance of the Property, and entering into the Loan (as defined in the Security Instrument) and activities incidental thereto;
- (b) acquire or own any material assets other than (i) the Property, and (ii) such incidental Personal Property (as defined in the Security Instrument) as may be necessary for the operation of the Property;
- (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case the consent of Lender (as defined in the Security Instrument);
- (d) (i) fail to observe its organizational formalities or preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualification to do business in the State where the Property is located, if applicable, or (ii) without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of the Company's partnership agreement, articles or certificate of incorporation, articles of organization or similar organizational documents, as the case may be;
- (e) own any subsidiary or make any investment in, any person or entity without the consent of Lender;

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- (f) commingle its assets with the assets of any of its members, general partners, affiliates, principals or of any other person or entity, participate in a cash management system with any other entity or person or fail to use its own separate stationery, telephone number, invoices and checks;
- (g) become insolvent and fail to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due;
- (h) (i) fail to maintain its records (including financial statements), books of account and bank accounts separate and apart from those of the members, general partners, principals and affiliates of the Company, the affiliates of a member, general partner or principal of Company, and any other person or entity, (ii) permit its assets or liabilities to be listed as assets or liabilities on the financial statement of any other entity or person, or (iii) include the assets or liabilities of any other person or entity on its financial statements;
- (i) enter into any contract or agreement with any member, general partner, principal or affiliate of the Company, any guarantor of the Loan, or any member, general partner, principal or affiliate thereof (other than a business management services agreement with an affiliate of the Company, provided that (i) such agreement is acceptable to Lender, (ii) the manager, or equivalent thereof, under such agreement holds itself out as an agent of the Company, and (iii) the agreement meets the standards set forth in this subsection (j) following this parenthetical), except upon terms and conditions that are commercially reasonable, intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of the Company, any guarantor of the Loan, or any member, general partner, principal or affiliate thereof;
- (j) fail to correct any known misunderstandings regarding the separate identity of the Company or any member, general partner, principal or affiliate thereof or any other person;
- (k) guarantee or become obligated for the debts of any other entity or person or hold itself out to be responsible for the debts of another person;
- (l) make any loans or advances to any third party, including any member, general partner, principal or affiliate of the Company, or any member, general partner, principal or affiliate thereof, and shall not acquire obligations or securities of any member, general partner, principal or affiliate of the Company, or any member, general partner, or affiliate thereof;
- (m) fail to file its own tax returns or be included on the tax returns of any other person or entity except as required by applicable law;
- (n) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name

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in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company is responsible for the debts of any third party (including any member, general partner, principal or affiliate of the Company, or any member, general partner, principal or affiliate thereof);

- (o) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (p) share any common logo with or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or affiliate of the Company, (ii) any affiliate of a general partner, principal or member of the Company, or (iii) any other person or entity;
- (q) fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;
- (r) pledge its assets for the benefit of any other person or entity, other than with respect to the Loan;
- (s) fail to maintain a sufficient number of employees in light of its contemplated business operations;
- (t) fail to hold its assets in its own name;
- (u) fail to consider the interests of its creditors in connection with all Company actions to the extent permitted by applicable law; or
- (v) unless otherwise permitted by the Loan Documents (as defined in the Security Instrument), have any of its obligations guaranteed by an affiliate.

ARTICLE NINE: EFFECT OF BANKRUPTCY, DEATH OR INCOMPETENCY OF A MEMBER

The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a member shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such member shall have all the rights of such member for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any Company interest shall be subject to all of the restrictions hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent member.

ARTICLE TEN: SUBORDINATION OF INDEMNIFICATION PROVISIONS

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Notwithstanding any provision hereof to the contrary, any indemnification claim against the Company arising under these Articles, the Operating Agreement, if any, or the laws of the state of organization of the Company shall be fully subordinate to any obligations of the Company arising under the Security Instrument or any other Loan Document, and shall only constitute a claim against the Company to the extent of, and shall be paid by the Company in monthly installments only from, the excess of net operating income for any month over all amounts then due under the Security Instrument and the other Loan Documents.

FSM PARTNERS, L.L.C., a Florida limited
liability company

By: 

JONAS S. NORDAL, Member

By: 

MARK L. SAGER, Member

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