

Division of Corporations

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From: Account Name : LLOYD GRANET
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FLORIDA PROFIT CORPORATION OR P.A.

EIRE INDIANAPOLIS SPE, INC.

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**ARTICLES OF INCORPORATION
OF
EIRE INDIANAPOLIS SPE, INC.**

The undersigned incorporator, for the purpose of forming a corporation under the Florida Business Corporation Act, adopts the following Articles of Incorporation.

ARTICLE I. NAME

The name of the corporation is Eire Indianapolis SPE, Inc.

ARTICLE II. PRINCIPAL OFFICE

The principal place of business address and mailing address of this corporation shall be 2840 NW Boca Raton Boulevard, Suite 101, Boca Raton, Florida 33431.

ARTICLE III. CAPITAL STOCK

The maximum number of shares of stock that this Corporation is authorized to issue and have outstanding at any one time is 1000 shares of common stock having a par value of \$1.00.

ARTICLE IV. REGISTERED AGENT AND INITIAL REGISTERED OFFICE.

The name of the initial registered agent whose business office is identical to the registered office is: Mark Spillane, 2840 NW Boca Raton Boulevard, Suite 101, Boca Raton, Florida 33431.

The address of the registered office of the corporation is 2840 NW Boca Raton Boulevard, Suite 101, Boca Raton, Florida 33431.

The Board of Directors may from time to time move the registered office to any other address in the State of Florida.

ARTICLE V. BOARD OF DIRECTORS.

The Corporation shall have two (2) directors initially. The number of directors may be increased or diminished from time to time, as provided in the bylaws adopted by the shareholders, but shall never be less than two, one of whom shall be an Independent Director, who, notwithstanding anything set forth in these Articles shall not be entitled to receive any distributions, income, gain, net profit, net loss, deduction credit or other sums from the Corporation and shall not have any voting rights or management powers except as expressly set forth in Article VI, hereof and further provided upon the death, legal incapacity, expulsion, or

Eire Rochester II SPE, Inc.

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bankruptcy of such Independent Director, the Corporation shall have the option to purchase the interest of such Independent Director for the sum of \$100.00. Except as otherwise expressly set forth herein, and the Operating Agreement, as hereafter defined, the Independent Director irrevocably waive any rights or power:

- (a) To cause the Corporation or LLC as hereafter defined, or any assets of the Corporation or the LLC to be partitioned;
- (b) To cause the appointment of a receiver of all or any portion of the assets of the Corporation or LLC;
- (c) To compel any sale of all or any portion of the assets of the Corporation or LLC;
- (d) To file a complaint or institute a proceeding at law or in equity to cause the dissolution or liquidation of the Corporation or LLC.

As used in these Articles of Incorporation, the term "Independent Director" shall mean a person reasonably satisfactory to Lender, who shall not have been at the time of such individual's appointment, shall not have been at any time during the preceding five years, and shall not be at any time while serving as an Independent Director, (i) a shareholder of, or an officer, director, partner, member or employee of, the LLC or any of its shareholders, partners, members, subsidiaries or affiliates, (ii) a customer of, or supplier to, the LLC or any of its shareholders, partners, members, subsidiaries or affiliates (other than a customer or supplier that does not derive more than five percent (5%) of its revenues from its activities with the LLC, its members or any affiliate thereof), (iii) a person or other entity controlling or under common control with any such shareholder, partner, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier or customer. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity whether through ownership of voting securities, by contract or otherwise.

ARTICLE VI. PURPOSE

The purposes and powers of the Corporation shall be limited to engaging in all lawful acts or activities in connection with (i) being the Manager/Member of EIRE INDIANAPOLIS FLORIDA L.L.C., a Florida Limited Liability Company, (the "LLC") the owner of the "Property", real estate and all improvements thereto located in the Town of Fishers, Hamilton County, State of Indiana more particularly described in Exhibit "A", (ii) mortgaging, constructing, renovating, managing, maintaining, repairing, selling, operating, financing or otherwise dealing with the Property as the Manager/Member of LLC, pursuant to and in accordance with the terms and conditions of an Amended and Restated Operating Agreement entered into with the Limited Liability Company dated as of June 8, 2001 (the "Operating Agreement") subject to the terms and conditions of that certain loan (the "Loan") made or intended to be made in favor Legg Mason Real Estate Services, Inc. or such lender as the

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Corporation shall deem appropriate (the "Lender"). For so long as the Loan is in favor of Legg Mason Real Estate Services, Inc., or its successors or assigns, is outstanding, the Corporation shall:

- A. (a) Maintain its own books, records and accounts separate from any other person or entity;
- (b) cause its financial statements to be prepared in accordance with generally accepted accounting principles in a manner that shows its assets and liabilities separate and apart from those of any other person or entity;
- (c) pay all its liabilities and expenses only out of its own funds;
- (d) pay the salaries of its own employees, if any, and maintain a sufficient number of employees in light of its contemplated business operations, but no more than necessary to perform authorized activities;
- (e) allocate fairly and reasonably any overhead for expenses that are shared with an Affiliate, including paying for the office space and services performed by any employee of any Affiliate;
- (f) maintain adequate capital in light of its contemplated business operations;
- (g) maintain arm's length relationships with all Affiliates and enter into transactions with affiliates only on commercially reasonable basis;
- (h) in all dealings with the public, identify itself under its own name and as a separate and distinct entity;
- (i) independently make decisions with respect to its business and daily operations;
- (j) not commingle its fund or other assets with those of any other person or entity and hold all of its assets in its own name;
- (k) not assume or guarantee the liabilities of any other person or entity or hold out its credit as being available to satisfy the obligations of any other person or entity;
- (l) not acquire obligations or securities of, pledge its assets for the benefit of, or make loans or advances to, any affiliates;
- (m) observe all applicable or customary organizational formalities;
- (n) promptly correct any known misunderstanding regarding its separate identity;

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- (o) not identify itself as a division of any other person or entity;
- (p) use separate stationery, invoices and checks bearing its own name; and
- (q) not own, lease or operate any property, real or personal, other than the minimum amount of property necessary to perform authorized activities; and
- (r) not acquire the direct obligations of, or securities issued by, any Affiliate.
- (s) Notwithstanding any other provision of this these Articles or any provision of law that otherwise so empowers the Corporation, for so long as the Loan is outstanding, the Corporation (A) shall not, do any of the actions referred to in subparagraphs (i) below, without the consent of the Independent Director and (B) shall not do any of the actions referred to in subparagraphs (ii) through (vii) below, without the express prior written consent of the Independent Director and the Lender, in Lender's sole discretion
 - (i) file a voluntary or involuntary petition or otherwise initiate proceedings for the Corporation to be adjudicated insolvent or seeking an order for relief as a debtor under any chapter of the United States Bankruptcy Code, as amended (11 U.S.C. §§ 101 et. seq.), or file or cause the filing of any petition seeking any composition, reorganization, readjustment, liquidation, dissolution or similar relief for the Corporation or LLC under the present or any future federal bankruptcy laws or any other present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors; or seek the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Corporation or LLC or of all or any substantial part of the properties and assets of the Corporation or LLC, or make any general assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or declare or effect a moratorium on its debt or take any corporate action in furtherance of any such action, or consent to or acquiesce in any of the foregoing actions; or
 - (ii) engage in any business or activity other than as set forth in these Articles; or
 - (iii) voluntarily dissolve or liquidate in whole or in part, consolidate or merge with any other entity or sell all or substantially all of the Corporation's or LLC assets; or

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- (iv) amend these Articles of Incorporation or the Articles of Organization of the LLC in any manner or make any other amendment to those Articles contrary to the provisions of any document evidencing or securing the Loan ; or
 - (v) borrow money or incur indebtedness (except for the Loan) other than normal trade accounts payable and any other indebtedness expressly permitted by the documents evidencing and securing the Loan; or
 - (vi) take or permit any action which would violate any provision of any of the documents evidencing or securing the Loan;
 - (vii) or make or permit any amendment to these Articles of Incorporation or the Articles of Organization of the LLC which would cause any provision hereof which is made subject to this section or any part of this section no longer subject to this section.
- B. If the loan is not outstanding, the Corporation may do any and all things permitted under applicable law, including, without limitation, any action set forth in each of the subsection (s) above.
- C. The Corporation may employ such individuals and grant such employees such responsibilities and duties as the Member deems necessary or appropriate to effectuate the provisions of this Agreement and to conduct the business and affairs of the Corporation.

ARTICLE VII. INCORPORATOR.

The name and street address of the person signing these Articles of Incorporation is:
Mark Spillane, 2840 NW Boca Raton Boulevard, Suite 101, Boca Raton, Florida 33431.

ARTICLE VIII. AMENDMENT

These Articles of Incorporation may be amended in the manner provided by law.

In witness whereof, the undersigned as Incorporator, has executed these Articles of Incorporation on the date set out below.


MARK SPILLANE.

2/11/01
Date

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STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, a Notary Public, personally appeared Mark Spillane, to me known to be the person described as Incorporator and who executed the foregoing Articles of Incorporation, and acknowledged before me that he subscribed to these Articles of Incorporation on the date set out above.

✓ Personally known or _____ identified with _____



Kim Bartels
My Commission DD006116
Expires March 04 2005

(Seal)

Kim Bartels
Kim Bartels

Notary Public State of Florida at Large
Commission expiration:

CERTIFICATE OF DESIGNATION
REGISTERED AGENT/REGISTERED OFFICE

Pursuant to the provisions of section 607.0501, Florida Statutes, the undersigned corporation, organized under the laws of the state of Florida, submits the following statement in designating the registered office/registered agent, in the state of Florida.

1. The name of the corporation is: Eire Indianapolis SPE, Inc.
2. The name and address of the registered agent and office is: Mark Spillane, 2840 NW Boca Raton Boulevard, Suite 101, Boca Raton, Florida 33431.

SIGNATURE: _____

Mark Spillane

TITLE: Incorporator

DATE: _____

2/11/01

HAVING BEEN NAMED AS REGISTERED AGENT TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE

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LLOYD GRANET

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PROVISIONS OF ALL STATUTES RELATING TO THE PROPER AND COMPLETE
PERFORMANCE OF MY DUTIES AND I AM FAMILIAR WITH AND ACCEPT THE
OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

SIGNATURE: 

MARK SPILLANE

DATE: 6/11/91

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